

IN THE SUPREME COURT OF OHIO

UTSI FINANCE, INC. (CROWN :
ENTERPRISES CONSTRUCTION :
SERVICES, INC.) (CROWN :
ENTERPRISES, INC.) :
: Case No. 2015-1861
Appellant, :
: Appeal from Ohio Board of Tax Appeals
v. : Case Nos. 2014-3748 and 2014-3749
:
FRANKLIN COUNTY BOARD OF :
REVISION, FRANKLIN COUNTY AUDITOR, :
THE TAX COMMISSIONER OF OHIO AND :
THE BOARD OF EDUCATION OF THE :
HILLIARD CITY SCHOOL DISTRICT, :
: Appellees.
:

**MERIT BRIEF OF APPELLEE BOARD OF EDUCATION OF THE
HILLIARD CITY SCHOOL DISTRICT**

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STATEMENT OF THE CASE AND FACTS

The property involved in this appeal is an industrial facility located at 2950 International Street, Columbus, Ohio. The Franklin County Auditor originally assessed the property at a value of \$1,850,000 for tax year 2011. Both the Board of Education of the Hilliard City School District (“BOE”) and UTSI Finance Inc. (Crown Enterprises Construction Services, Inc.) (Crown Enterprises, Inc.) (“UTSI”) filed tax year 2011 complaints with the Franklin County Board of Revision (“BOR”). The BOE’s complaint requested that the value of parcel numbers 560-212873 and 560-212872 be increased to \$2,313,500, the purchase price paid in the March 2009 arm’s length sale of the property. UTSI’s complaint sought to reduce the assessed value of the property to \$1,100,000.

At the BOR hearing, the BOE presented the deed and conveyance fee statement establishing that the parcels sold in March 2009 for \$2,313,500. (Supp. 1, 2.) No one with personal knowledge of the March 2009 sale appeared at the BOR hearing to rebut the arm’s length nature of this sale. Rather, the property owner’s sole witness was Ms. Kelly Fried, an appraiser. Despite having no personal knowledge of the terms of the March 2009 sale, Ms. Fried testified regarding the circumstances surrounding the March 2009 sale. Ms. Fried’s testimony was based solely upon the out of court statements made to her by the “owner.” The BOE objected to Ms. Fried’s hearsay testimony. While the BOR did not specifically rule upon the BOE’s objection, Ms. Fried was permitted to continue with her testimony and the BOR ultimately relied upon Ms. Fried’s hearsay testimony in determining the value of the subject property. Based upon the alleged statements made to Ms. Fried by the “owner” that the March 2009 sale was between related parties, Ms. Fried disregarded the March 2009 sale and provided

an opinion of value of \$1,470,000 for only one of the parcels at issue – parcel number 560-212873. Ms. Fried did not provide an opinion of value for parcel number 560-212872.

In rendering its decision on the 2011 complaints, the BOR recognized that it had previously relied upon the March 2009 sale to determine the value of the property for tax year 2009. However, the BOR ignored its previous finding that the March 2009 sale was an arm's length transaction and essentially reversed itself – now finding that the sale was between related parties and included items other than real property based upon Ms. Fried's hearsay testimony. The BOR also declined to rely on the March 2009 sale due to alleged changes in the market, despite the fact that the property owner submitted no evidence to establish this fact. The BOR reduced the value of parcel number 560-212873 to \$1,470,000; the value opined by Ms. Fried and affirmed the Auditor's original value of \$132,700 for parcel number 560-212872. The BOE appealed the erroneous BOR decisions to the Ohio Board of Tax Appeals ("BTA").

The BTA correctly held that the BOR improperly relied upon Ms. Fried's hearsay testimony relating to the terms of the March 2009 sale and that such testimony should not be considered. Accordingly, the BTA determined that \$2,313,500 purchase price paid in the March 2009 sale was the best evidence of the value of the subject property for tax years 2011, 2012 and 2013, since UTSI failed to rebut the arm's length nature or recency of the sale. The property owner appealed the BTA's decision to this Court.

LAW AND ARGUMENT

Introduction:

The BTA reasonably and lawfully determined that the March 2009 arm's length sale of the property was the best evidence of the value of the property as of January 1, 2011. In this case, the sale price paid in the May 2009 sale must be taken to be its true value under R.C. 5713.03 since UTSI failed to rebut the arm's length nature or recency of the sale. For the tax years in question¹, R.C. 5713.03 read, 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."

This Court has consistently reaffirmed that R.C. 5713.03 means exactly what it says in that the price paid for real property in an arm's-length sale must be taken as its true value in money as a matter of law. In *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, at ¶13 and *Lakota Local Sch. Dist. Bd. of Educ. v. Butler County Bd. of Revision*, 108 Ohio St. 3d 310, 2006 Ohio 1059, 843 N.E. 2d 757, at ¶22 and 23, the Court held that under the "plain language" of R.C. 5713.03, the sale price is required to be taken as the true value of the property. In recent years, this Court has consistently applied *Berea*, even when unusual circumstances exist with regard to the property involved in the

¹ While R.C. 5713.03 was amended by Am.Sub.H.B. No. 487 to state that the auditor "may" use an arm's-length sale price, rather than stating that the auditor "shall" do so, the effective date of this amendment was September 10, 2012. Further, Am.Sub.H.B. No. 487 was amended by Am.Sub.H.B. No. 510, effective March 27, 2013. The R.C. 5713.03 amendments would not be effective until tax year 2014, since that is the first tax lien date following the amendment's effective date.

sale. *Rhodes v. Hamilton County Bd.*, 117 Ohio St. 3d 532, 2008 Ohio 1595, 885 N.E. 2d 236 and *Cummins Prop. Servs. v. Franklin County Bd. of Revision*, 117 Ohio St. 3d 516, 2008 Ohio 1473, 885 N.E.2d 222.

In addition, this Court has confirmed that the presentation of a deed and conveyance fee statement to a board of revision shifts the burden of proof to the property owner for the purposes of R.C. 5713.03. In *Columbus Board of Education v. Franklin County Board of Revision* (1996), 76 Ohio St. 3d 13, 16, 665 N.E.2d 1098, the Court stated that the conveyance fee form which was filed with the county auditor constitutes proof of the sale and puts the burden on the party opposing reliance upon the sale to “prove a lesser value” for the property. According to the Court:

Therefore, once the Columbus Board of Education introduced into evidence a copy of the deed and conveyance fee statement, which listed the five parcels being transferred for \$1,575,000, the burden to prove a lesser value shifted to Nestle. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St. 3d 493, 628 N.E.2d 1365.

In *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin County Bd. of Revision*, 125 Ohio St. 3d 485, 2010 Ohio 1921, 929 N.E.2d 426, the Court reconfirmed, stating:

(w)e have held that the “initial burden on a party presenting evidence of a sale is not a heavy one, where the sale on its face appears to be recent and at arm's length.” Indeed, our cases acknowledge that the school board, as the proponent of using a sale price to value real property, typically makes a prima facie case when it presents a recent conveyance-fee statement along with a deed to evidence the sale and the price. Moreover, the basic documentation of a sale invokes a “rebuttable presumption” that “the sale has met all the requirements that characterize true value.” (Citations omitted) [¶ 23 & 24]

In this case, the BOE presented a deed and conveyance fee statement establishing that the subject property sold in March 2009 for \$2,313,500.

UTSI has attempted to rebut the presumption raised by the sale documentation with the appraisal report and testimony of an appraiser with no personal knowledge of the sale.

However, once evidence of a qualifying sale has been presented, a property owner must rebut either the arm's length nature or recency of that sale before appraisal evidence can be considered. *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62, 64, 1999 Ohio 252, 717 N.E.2d 293; *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13, 885 N.E.2d 222. The Court has recently held that specific information contained in an appraisal report/testimony bearing on the question of the recency, the arm's-length character, or the voluntariness of the sale may be sufficient to rebut the presumption that the sale is the best evidence of value. *Columbus City Schools Bd. of Edn v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2016-Ohio-757 (“*Buckeye Hospitality*”) However, as set forth below, UTSI has submitted no such evidence in this case and therefore, UTSI has failed to rebut either the arm's length nature or the recency of the March 2009 sale. Accordingly, reliance upon appraisal evidence is improper. *HIN, L.L.C. v. Cuyahoga County Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, 923 N.E.2d 1144, ¶ 26.

Reply to Appellant's Proposition of Law #1:

The BTA properly determined that the March 2009 sale of the subject property was the best evidence of the value of the subject property as of January 1, 2011

1. The property owner was collaterally estopped from challenging the arm's length nature of the March 2009 sale

The BOR previously relied upon the March 2009 sale to increase the value of the subject property to \$2,313,500 for tax year 2009. (Appx. 1,2) The property owner elected not to participate in the 2009 BOR proceedings and did not appeal the BOR's 2009 decision relying upon the March 2009 sale. UTSI now attempts to challenge the arm's length nature of the March

2009 sale in the 2011 proceedings. UTSI is clearly precluded from challenging the arm's length nature of the March 2009 sale, as that issue was previously litigated in the tax year 2009 proceedings. As this Court recognized in *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* 80 Ohio St.3d 36, 1997-Ohio-360, 684 N.E.2d 312, a property owner may not challenge the arm's length nature of a sale in a subsequent year when that issue was previously litigated in a prior action, was ruled upon by a court of competent jurisdiction and when the party against whom collateral estoppel is claimed was a party to the previous action. As this Court stated in *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009 Ohio 2461, 909 N.E.2d 597:

To be sure, we have acknowledged a narrow range of applicability for the doctrine of collateral estoppel in tax proceedings. For purposes of collateral estoppel, the ultimate issue of tax value in one year does not constitute the "same issue" as the ultimate issue of tax value in a different year. But the determination in an earlier year of a discrete factual/legal issue that is common to successive tax years may bar relitigation of that discrete issue in later years *Columbus Bd. of Edn.* (owner could not relitigate the issue of the arm's length character of a particular sale of the property when the owner had litigated and lost that issue on a valuation complaint pertaining to a property year. (Citation omitted.)

While UTSI elected not to participate in the 2009 proceedings, UTSI, as the owner of the property, was a party to the 2009 proceedings, despite its election not to participate. R.C. 5715.12 provides that the board of revision shall not increase any valuation without giving notice to the person in whose name the property affected is listed and affording him or her the opportunity to be heard. The Court has consistently interpreted this section to mean that a property owner is an indispensable party to proceedings involving the owner's property, even if the owner does not file a complaint or participate in the proceedings. Accordingly, when a Board of Education or other third party files an increase complaint contesting the value of

property, the owner of that property automatically becomes a party and is permitted to participate in the proceedings even if the owner does not file a counter-complaint.

The importance of including a property owner in proceedings involving the value of its property is similarly recognized in other provision of the Ohio Revised Code. For example, R.C. 5715.19(B) requires the Auditor to give notice to the property owner when a complaint is filed by someone other than the owner to the property owner. R.C. 5715.19(C) provides that the board of revision shall notify the property owner at least ten days prior to a hearing of its time and place. Finally, R.C. 5715.20 requires the board of revision to give notice of its decision by certified mail to the person in whose name the property is listed. In *Columbus Apartments Assoc. v. Cuyahoga Cty. Bd. of Revision* (1981), 67 Ohio St.2d 85, 423 N.E.2d 147, the Court held:

In that it is the owner's, not the school board's, property which is the subject of the complaint and evaluation proceedings before a board of revision, the owner is an indispensable party to that proceeding.

Based upon the foregoing, UTSI is collaterally estopped from challenging the arm's length nature of the March 2009 sale because that issue was previously litigated and ruled upon in the 2009 proceedings. It is interesting that the Treasurer's representative expressly recognized the application of collateral estoppel at the BOR hearing when he stated that "once our Board determines that a sale is arm's length, it is arm's length." However, after the hearing, the same representative ignored the BOR's previous finding that the March 2009 sale was arm's length and specifically found that the sale was not arm's length based upon pure hearsay testimony.

Because UTSI was collaterally estopped from challenging the arm's length nature of the March 2009 sale, the only way UTSI could establish that this sale was not the best evidence of the

value of the property as of January 1, 2011 was to establish that market conditions, or the property itself changed from the date of sale to the tax lien date, thereby rendering the sale too remote to be indicative of value. As set forth above, in an attempt to meet this burden, UTSI offered Ms. Fried's testimony and appraisal report.

2. The property owner failed to meet its burden of submitting evidence to rebut the arm's length nature of the March 2009 sale.

UTSI argues that the BOE, as the appellant, had the burden of proof before the BTA, and that the BOE was required to submit new evidence on appeal to meet this burden. However, this argument was expressly rejected by the Court in *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, 950 N.E.2d 955. Therein, the Court held that the opponent of utilizing a sale price has the burden of rebutting either the arm's length character or the recency of the sale before the BTA, even if the BOR rejected the sale price below:

It is true that the appellant at the BTA typically bears the burden to establish a different valuation from the one determined below, *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St. 3d 268, 2009 Ohio 4975, 915 N.E.2d 1196, ¶ 23. But when the issue is whether a proffered sale price should be used to value the property, the burden at the BTA is usually on the same party who bore that burden at the BOR: the opponent of using the sale price. *Cummins Property Servs.*, 117 Ohio St.3d 516, 2008 Ohio 1473, 885 N.E.2d 222.

That burden does not shift at the BTA even if the BOR decided not to use the sale price as the criterion of value. In *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009 Ohio 5932, 918 N.E.2d 972, the board of revision had rejected the sale price as the value of the property at issue. *Id.* at ¶ 11. The property owner contended that the board of education had the burden at the BTA to show that the proposed sale price was indicative of value. *Id.* at ¶27. But we rejected that contention, holding that "the BTA was justified in viewing the conveyance-fee statement and the deed that the school board had presented to the BOR as constituting a prima facie showing of value." *Id.* at ¶ 28. By the same token, the conveyance-fee statement on which the school

board relies in the present case formed an adequate basis for the BTA to find a recent, arm's-length sale, subject to rebuttal by Riser.

Accordingly, the burden of proof herein clearly did not shift to the BOE before the BTA, but remained with UTSI, as the opponent of using the sale price.

In its brief, UTSI relies upon the Court's decision in *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 ("*Eastbank*") as support for its argument that BOE could not prevail at the BTA because the BOE failed to present new evidence of value. However, *Eastbank* is factually distinguishable. In *Eastbank*, the Court held that the evidence on the Auditor's property record card affirmatively negated the Auditor's value, because the property record card failed to prove that the Auditor correctly applied the completion percentage adjustment when valuing the condominiums. The Court held that the BOE was required to submit new evidence on appeal to support its claimed value (i.e., the Auditor's value) because the property owner submitted specific and plausible evidence to negate the Auditor's value before the board of revision. The factual scenario herein is distinguishable in that the BOE has submitted a deed and conveyance fee statement which creates a rebuttable presumption that the sale price is the best evidence of value. The burden remained on UTSI, as the opponent of utilizing a sale price, to rebut either the arm's length character or the recency of the sale under *N. Royalton*.

3. The property owner failed to prove a change in market conditions from March 9, 2009 to January 1, 2011

In its brief, UTSI argues that market conditions changed from March 2009 to January 1, 2011, and that these changes made it improper to rely upon the March 2009 sale price in valuing

the property for tax year 2011. However, UTSI failed to submit any competent, probative evidence to substantiate this argument.

The Court has held that a change in market condition occurring between the sale date and tax lien date may render an otherwise qualifying sale too remote to be considered indicative of value. In *Health Care REIT, Inc. v. Cuyahoga Cty. Bd. of Revision*, 140 Ohio St.3d 30, 2014-Ohio-2574; 14 N.E.3d 1009, the Court affirmed a decision of the BTA finding a sale to be too remote to the tax lien date due to changing market condition because “the BTA relied on affirmative evidence indicating that the sale should not be regarded as recent.” Herein, UTSI has produced no such evidence. Accordingly, the BTA correctly held:

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, paired 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. (Appx. 6-7.)

Herein, UTSI's only witness failed to acknowledge any change in market conditions from March 2009 to January 2011. Despite being asked by UTSI's counsel on three separate occasions whether the market changed from March 2009 to January 2011, Ms. Fried declined to affirmatively answer the question. Rather, each time she was directly asked whether the market changed from 2009 to 2011, Ms. Fried stated that market conditions declined from 2008 to 2011. Accordingly, both the March 2009 sale date and the January 2011 tax lien date followed the decline in the market. Further, Ms. Fried only testified to general macro market trends between 2008 and 2011 relating to capitalization rates and demand.

UTSI argues that Ms. Fried's report contains ample evidence to indicate that the market significantly changed from March 2009 to January 2011. However, the ONLY information in Ms. Fried's report comparing the 2009 market to the 2011 market is a *Korpacz Real Estate Investor Survey* which is a national survey reflecting overall capitalization rates. (Supp. 5.) While this is a national survey and therefore contradicts, rather than supports UTSI's argument, the study reveals that the national capitalization rate at the end of Q1, 2009 was 7.75% when sale occurred and the national capitalization rate was approximately 7.8 at the beginning of Q1 2011, the tax lien date in question.

In addition, UTSI references the market conditions adjustment Ms. Fried made to her sale comparables as additional support for its claimed change in market conditions. However, this information is also not sufficient to establish a change in market conditions from March 2009 to January 2011. In performing her sales comparison approach, Ms. Fried adjusted an April 2008 sale of vacant land to account for superior market conditions (Supp. 6.) and April 2010 sale of an industrial building to account for inferior market conditions. (Supp. 7.) Notably absent from Ms. Fried's report is any information relating to the subject's market in early 2009.

In its brief, UTSI relies upon the Court's decision in *Health Care REIT, Inc. v. Cuyahoga Cty. Bd. of Revision*, 140 Ohio St.3d 30, 2014-Ohio-2574, 14 N.E.3d 1009 as support for its contention that evidence of general market changes is sufficient to rebut the recency of a sale. However, the issue before the Court in *Health Care Reit* was whether there was sufficient evidence in the record to support the BTA's decision to find that a sale was too remote due to changing market conditions. Therein, this Court recognized the BTA's evaluation of appraisal evidence in one appeal does not necessarily "mandate any particular outcome" in another case, holding "[w]e have firmly rejected arguments that the BTA must act consistently when

evaluating evidence of value, even when the evidence goes to value of the same property in different tax years. See *Olmstead Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009-Ohio-2461, 909 N.E.2d 597, ***, ¶¶24-25. Although 'consistency in the manner of evaluating evidence is desirable,' 'the concern for consistency is overridden by the imperative that the BTA correctly determine value in the case before it.' *Id.* at ¶25."

Further, in *Helathcare Reit*, the BTA's determination that the sale was remote due to changing market conditions was based upon the presentation of affirmative evidence. The sale was 26 months prior to the tax lien date and neither the property owner's appraiser nor the Board of Education's appraiser relied upon the sale when valuing the property. In addition, the BTA determined that the sale included items other than real property. After reviewing the evidence, the Court determined that there was sufficient evidence to support the BTA's finding that the sale was remote from the relevant tax lien date.

In this case, the BTA determined that UTSI failed to present sufficient affirmative evidence to establish that the March 2009 sale was not sufficiently recent to the 2011 tax lien date. This Court must defer to the BTA's credibility determination and may only reverse if it finds the BTA's decision unreasonable. R.C. 5717.04. *Schwartz v. Cuyahoga Cnty. Bd. of Revision*, 143 Ohio St. 3d 496, 2015-Ohio-3431, 39 N.E.3d 1223.

The BTA fully considered the evidence presented, and its decision was reasonable and lawful. UTSI has not submitted ANY evidence comparing the subject's market in March 2009 to January 1, 2011. As previously stated, all of Ms. Fried's comparisons discuss differences from 2008 to 2011, NOT 2009 to 2011. UTSI, as the opponent of the sale, was required, but failed, to show that the sale did not occur in the market that is relevant in this particular case. See *AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision*, 119 Ohio St. 3d 563, 2008

Ohio 5203, 895 N.E.2d 830. UTSI failed to present any competent probative evidence, such as a paired sale analysis or relevant market data to support its assertion that a change in market conditions occurred in relation to the subject property.

4. The date on the conveyance fee statement is the date of transfer

UTSI further argues that the subject property actually sold on September 20, 2002, the date that the deed was notarized, not on March 5, 2009 when the deed was recorded and the conveyance fee statement was filed. However, this Court has consistently held that the sale date for purposes of establishing the true value of property pursuant to R.C. 5713.03 is the date on which the conveyance-fee statement is filed.

In *HIN, L.L.C v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, 923 N.E.2d 1144, this Court held that the date of filing of the conveyance-fee statement should be used as the date of sale rather than the date the sale was negotiated or closed for purposes of determining true value under R.C. 5713.03:

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.

For this reason, 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.

See, also *N. Royalton City School Dist. Bd. of Edn., supra*.

As support for its argument, UTSI cites a statement from the Michigan Secretary of State's website and an excerpt from the Ashtabula County Bar Association's Notary Public Handbook to stress the importance of the legal effect of notarization. However, neither of these sources serve as precedent for this Court, especially in light of the fact that the Court has already considered the issue and made its determination.

Further, the fact that the deed was signed and notarized in 2002 is not evidence that title to the property transferred in 2002, as the mere act of signing and notarizing a deed is not sufficient to transfer title to property. A deed, even if fully executed and notarized, takes legal effect only upon delivery to the buyer. See *Leonard v. Kebler's Admr.*, 50 Ohio St. 444, 453, 34 N.E. 659 (1893). Clearly, notarization of the deed is not evidence of delivery.

5. The property owner failed to prove that the March 2009 sale was between related parties

UTSI argues that the March 2009 sale was not an arm's length transaction because it was between related parties. However, as set forth above, UTSI is collaterally estopped from challenging the arm's length nature of the 2009 sale as that issue was previously litigated and ruled upon in the 2009 proceedings. Even if UTSI were permitted to relitigate the issue, UTSI has failed to present any competent, probative evidence to support this allegation.

At the BOR hearing, Ms. Fried testified that she did not consider the March 2009 sale of the subject property to be arm's length because the "owner" told her the sale was between related parties. Although Ms. Fried testified that she interviewed the "owner," she never identified the name or position of the individual she interviewed. UTSI is a publicly traded company and

therefore has many “owners.” According to the out-of-court statements made by the “owner” to Ms. Fried, the family that owned a majority interest in UTSI was an owner in Lakeshore Ventures, LLC, and the seller. In order to establish that the March 2009 sale between two corporate entities was between related parties, UTSI was required to produce the testimony of a knowledgeable individual who was personally involved in this sale transaction. Even if Ms. Fried’s testimony was not inadmissible hearsay, her testimony alone is clearly insufficient to establish an alignment of interest between the buyer and seller, or other motivations atypical of the market.

In *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St. 3d 1, 2014-Ohio-853, 9 N.E.3d 920, the Court summarized the relevant case law in this area as follows:

Both the appraisal literature and the case law define "market value" in part in terms of whether the buyer and the seller act as "typically motivated market participants" who are acting "in their own self-interest." *See, e.g.*, Internatl. Assn. of Assessing Officers, *Property Assessment Valuation* 17-19 (2d Ed.1996) (quoting the Uniform Standards of Professional Appraisal Practice definition that calls for a buyer and a seller to be "typically motivated" and to be "acting in what they consider their best interests," *id.* at 18); American Institute of Real Estate Appraisers (now the Appraisal Institute), *The Dictionary of Real Estate Appraisal* 194-195 (1984) (definition of "market value" calling for the buyer and seller to be "motivated by self-interest"); Appraisal Institute, *The Appraisal of Real Estate* 22-25 (13th Ed.2008) (quoting various definitions of market value to the same effect); *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, 950 N.E.2d 955, ¶ 33 ("one primary characteristic of an arm's-length sale is that the parties act in their own self-interest"); *AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision*, 119 Ohio St.3d 563, 2008-Ohio-5203, 895 N.E.2d 830, ¶ 25 (a "typically motivated" transaction is one in which the buyer and seller are pursuing their own financial interests), citing *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, 885 N.E.2d [8] 222, ¶ 31, and *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532, 2008-Ohio-1595, 885 N.E.2d 236, ¶ 10. It follows that the inquiry into whether "the parties to a sale are related bears on whether they are self-interested for purposes of R.C. 5713.03." *N. Royalton*, ¶ 33.

In *N. Royalton*, we further explained that the related-party inquiry is important "because related parties may be pursuing the identical interest of common owners rather than acting as separately interested, typically motivated actors in the marketplace." *Id.*

The classic related-party situation arises when the interests of the seller and the buyer are aligned (atypically for the market) by their being under common ownership. For example, in *Shiloh Automotive, Inc. v. Levin*, 117 Ohio St.3d 4, 2008-Ohio-68, 881 N.E.2d 227, a sale was arranged between MTD Products, Inc., as the seller and Shiloh Industries, Inc., as the purchaser. MTD owned a 37 percent interest in Shiloh at the outset; during the negotiation of the contract, MTD increased its ownership in Shiloh to majority status: the seller thus owned 51 percent of the buyer. *Id.* at ¶ 8-9. We affirmed the BTA's conclusion that the sale could not be regarded as an arm's-length transaction that furnished the value of the personal-property assets, because of the "collective, mutual interests" of the parties. *Id.* at ¶ 30.

Even if we were to accept Ms. Fried's hearsay statement, as a publicly held entity, UTSI's ownership is dispersed among the general public in shares of stock. UTSI has failed to present any evidence to establish what percentage ownership interest the common owner owned in UTSI or the seller, or whether the common owner had any ability to make operating decision on behalf of either UTSI or the seller. In addition, since UTSI offered Ms. Fried to serve as a conduit for the testimony of the "owner," the BOE was denied any ability to cross-examine on this issue. Clearly, a blanket hearsay allegation that a family owns stock in both corporations, at least one of which is publicly traded, is insufficient to prove an alignment of interest or other motivations atypical of the market.

UTSI points to the fact that the grantor and grantee have addresses on the same street as support for its argument that the parties must be related. The BTA recognized the absurdity of this argument and properly rejected it. The fact that two business entities have addresses on the same street is clearly not sufficient to establish that the motivations of those entities were

somehow aligned or were atypical of the market.

6. The property owner failed to prove that the property included items other than real property

UTSI next argues that the March 2009 sale price included consideration for the transfer of personal property. However, as set forth above, UTSI is collaterally estopped from challenging the arm's length nature of the 2009 sale as that issue was previously litigated and ruled upon in the 2009 proceedings. Even if UTSI were permitted to relitigate the issue, UTSI has failed to present any competent, probative evidence such as a list of items and monetary amounts attributed hereto, prepared contemporaneous with the sale, to support an allocation of the aggregate purchase price. Accordingly, UTSI has clearly failed to rebut the allocation to real property on the conveyance fee statement.

As set forth above, Ms. Fried testified at the BOR hearing that she did not consider the March 2009 sale of the subject property to be arm's length because the "owner" told her the sale was between related parties. Ms. Fried did not identify the name or position of the individual she interviewed. During cross examination, Ms. Fried referenced her notes, which were taken during this interview, as she could not remember the exact out of court statements made to her by the "owner." After examining her notes, Ms. Fried stated that the March 2009 sale was between related parties and that the \$2,313,500 purchase price was paid for more than just the real estate. Ms. Fried did not know what else may have been included in the transaction, only that the "owner" told her that the transaction included more than just real estate.

UTSI, as the party seeking to reduce the value of real property below the full sale price, has the burden of showing the propriety of allocating some portion of that reported price to other

assets. *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-O hio-1921, 929 N.E.2d 426; see, also, *St. Bernard Self-Storage, L.L.C. v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249, 875 N.E.2d 85. The Court has held that "if the record clearly establishes that a portion of a sale price pertains to personal property, the BTA should subtract that portion from the stated sale price to arrive at the amount of consideration paid for the realty." *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 125 Ohio St.3d 103, 2010-Ohio-1040, 926 N.E.2d 302, ¶22. According to the Court, "the applicable standard is whether the record contains 'corroborating indicia' or 'best available evidence' that supports an allocation of the aggregate purchase price." *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶18, 992 N.E.2d 1117, quoting *St. Bernard, supra*, at ¶17.

In this case, UTSI has failed to submit any evidence that would unequivocally establish a basis for allocating any portion of the sale price to the personal property. While Ms. Fried made a general hearsay statement that the "owner" told her the purchase price included more than the real estate, all documentation submitted to the county auditor reflects a value for realty only. See *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010 Ohio 687, 923 N.E.2d 1144. Ms. Fried could not identify what, if any, personal property may have been involved in the transfer. Herein, UTSI clearly failed to produce any allocation of the purchase price that was performed contemporaneous with the sale.

Reply to Appellant's Proposition of Law No 2.

The Board of Tax Appeals properly determined that Ms. Fried's testimony relating to the arm's length nature of the March 2009 sale was inadmissible.

At the BOR hearing, Ms. Fried testified that the “owner” told her that the March 2009 sale was between related entities and based upon this representation, Ms. Fried concluded that the March 2009 sale was not arm’s length. Although Ms. Fried testified that she interviewed the “owner,” she never identified the name or position of the individual she interviewed. UTSI is a publicly traded company and therefore has many “owners.” The BOE objected to Ms. Fried’s testimony as it was based upon hearsay and the BTA properly excluded Ms. Fried’s testimony relating to the March 2009 sale from the record.

The BTA is not strictly bound by the rules of evidence. In *Bd. of Edn. v. Cuyahoga County Bd. of Revision* (1996), 74 Ohio St. 3d 415, 1996 Ohio 282, 659 N.E.2d 1223, the Court summarized the BTA’s discretion in admitting evidence:

The BTA has discretion in admitting evidence, *In re Ohio Turnpike Com.* (1955), 164 Ohio St. 377, 131 N.E.2d 397, [10] *** paragraph eight of the syllabus; *Akron v. Public Utilities Com.* (1966), 5 Ohio St. 2d 237, 242, 215 N.E.2d 366 ***, weighing it, and granting credibility to testimony. *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155, 573 N.E.2d 661 ***. Unless the BTA abuses this discretion, we will affirm its decision. *Webb Corp. v. Lucas Cty. Bd. of Revision* (1995), 72 Ohio St.3d 36, 1995 Ohio 232, 647 N.E.2d 162 ***.

However, while the Ohio Rules of Evidence do not strictly apply to the BTA, they may serve to guide BTA hearings. See, e.g., *Orange City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1996), 74 Ohio St. 3d 415, 1996 Ohio 282, 659 N.E.2d 1223; *Dublin Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 450, 1997 Ohio 327, 687 N.E.2d 422.

Further, the BTA’s ability to consider and accord weight to evidence is not unlimited. In *Hooser v. Ohio State Racing Comm’n*, 10th Dist. Franklin No. 13AP-320, 2013-Ohio-4888, the Tenth District Court of Appeals held:

Administrative agencies are not strictly bound by rules of evidence. *Belcher v.*

Ohio State Racing Comm., 10th Dist. No. 03AP-786, 2004-Ohio-1278, ¶ 12. Hearsay may be considered by an administrative agency and the rules of hearsay exclusion are not strictly applied in administrative hearings. *Felice's Main St., Inc. v. Ohio Liquor Control Comm.*, 10th Dist. No. 01AP-1405, 2002-Ohio-5962. However, an administrative agency should not act upon evidence which is not admissible, competent or probative of the facts which it is to determine. The hearsay rule is relaxed in administrative proceedings, but the discretion to consider hearsay evidence cannot be exercised in an arbitrary manner. *Hong Kong Trading Ctr. v. Ohio Liquor Control Comm.*, 10th Dist. No. 09AP-293, 2010-Ohio-913, ¶ 41.

In *Columbia Township Trustees v. Williams* 1976 Ohio App. LEXIS 5972 (Aug. 5, 1976),

Franklin App. No. 76AP-107, unreported, the Tenth District Court of Appeals held:

Although a hearing before an administrative agency, or as in this instance an administrative reviewing body, is not conducted, or reviewed, in the same sense as a civil proceeding in a court of law, yet certain of the aspects thereof must be treated similarly. These proceedings are known to be quasi-judicial in nature and they must be conducted with basic concepts of fair play. ***

Generally in the absence of statutory provisions to the contrary, an administrative agency may adopt and follow procedures for hearings and fact finding which are not strictly in accord with rules of practice as followed in the trial of civil actions. ***

However, administrative agencies may not be permitted to sanction as evidence something which is clearly not evidence. *** And, an administrative agency should not act upon evidence which is not clearly admissible, competent, or probative of the facts which it is to determine. ***."

Historically, the BTA has consistently refused to admit evidence that it deems to be unreliable hearsay. See, e.g., *Julia Realty Ltd. v. Cuyahoga Cty. Bd. of Revision* (March 14, 2016), BTA Nos. 2015-657, 2015-658; *McDonald v. Franklin Cty Bd. of Revision* (June 13, 2013), BTA Nos. 2012-3037 and 2012-3040; *Miller v. Medina County Bd. of Revision* (Feb. 28, 2013), BTA Nos. 2012-1219 and 2012-122. Hearsay is defined in Evid.R. 801(C) as an out of court statement, other than one made by the declarant while testifying at a hearing which is offered to prove the

truth of the matter asserted. Hearsay evidence is generally inadmissible, unless one of the exceptions in Evid.R. 803 or 804 applies.

Herein, UTSI argues that Ms. Fried's hearsay testimony was admissible pursuant to the exception provided in Evid. R. 803(6). UTSI argues that Evid. R. 803(6) provides an exception to the hearsay rule for expert testimony. However, UTSI's reliance upon Evid. R. 803(6) is completely misplaced as that rule provides a hearsay exception for business records, NOT expert testimony:

Rule 803. Hearsay exceptions; Availability of declarant immaterial

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness or as provided by Rule 901(B)(10), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

In fact, contrary to UTSI's assertions, there is no exception to the hearsay rule for expert testimony. Rather, Evid. R. 703 specifies the permissible basis for expert opinion testimony and provides that "[t]he facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by the expert or admitted in evidence at the hearing."

In *Almondree Apartments of Columbus, Ltd. v. Bd. of Revision*, 1988 Ohio App. LEXIS 2665, 1988 WL 70505 (Ohio Ct. App., Franklin County June 28, 1988), the Court of Appeals addressed the admissibility of expert testimony that is based purely upon hearsay, rather than on facts either perceived by the appraiser or facts admitted into evidence. In that case, the Court

reversed a decision of the BTA because the BTA accepted hearsay appraisal testimony relating to the arm's length nature of the sale of the property at issue therein:

The appraiser compiled his information according to his testimony from a review of the sales contract and the closing statement. However, neither of these two documents were presented at the hearing before the Board of Tax Appeals. Neither was there testimony from any of the parties involved in the sales transaction. Thus, the appraiser's opinion, that this sale was not an arms-length sale but that it was a resyndication, is only supported by hearsay or double hearsay evidence.

An administrative agency is not bound by strict rules of evidence in its proceedings. *Ohio Bell Tel. Co. v. Pub. Util. Comm.* (1984), 14 Ohio St. 3d 49. The hearsay rule is relaxed in administrative proceedings, but the discretion to consider hearsay evidence cannot be exercised in an arbitrary manner. *Haley v. Ohio State Dental Bd.* (1982), 7 Ohio App. 3d 1.

The entire testimony of the appraiser, relating to the key issue of whether the recent sale was an arm's-length transaction, was based upon the rankest type of hearsay. The appraiser relied solely on statements of employees of the taxpayer and the evaluation of documents not placed into evidence. In our opinion, the Board of Tax Appeals acted in an arbitrary manner when it relied on an appraiser's testimony that was strictly hearsay without requiring the production of any underlying documents or the testimony of parties to the sales transaction. The opinions of the appraiser about the identity of the parties to the sale or the nature of the transaction is not sufficient to carry the taxpayer's burden absent production of the underlying data that provides support for the naked opinions of the appraiser, partly, at least, of which are outside his areas of expertise. (Emphasis added.)

In this case, the BTA properly rejected the very same type of opinion testimony based upon pure hearsay statements relating to the key issue in this case – i.e., the arm's length nature of the March 2009 sale. Ms. Fried's testimony relating to this key issue was not based upon facts or data perceived by her or facts admitted into evidence, but instead was based upon the out-of-court statements of the owner who did not testify before either the BTA or BOR. As set forth above, Ms. Fried's testimony is based upon the rankest form of hearsay and the BTA properly excluded it from the record herein.

In its brief, UTSI relies upon this Court's decision in *Columbus City Schools Bd. of Edn v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2016-Ohio-757 ("*Buckeye Hospitality*") as support for its argument that appraisal testimony can be used to rebut the arm's length nature a sale. However, *Buckeye Hospitality* is completely inapplicable herein as that case dealt with the probative nature, rather than the admissibility of appraisal testimony. Therein, the Court held:

At the outset, it should be noted that it is permissible to rely on information contained in an appraisal report and an appraiser's testimony to find that the presumptive validity of using the sale price has been rebutted. We have held that the appraiser's certification of the appraisal report, in particular the factual statement contained in it, forms a sufficient basis to permit the use of such information in determining value. *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. And we conclude that the 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.

To be sure, the mere fact that an expert has opined a different value should not be deemed sufficient to undermine the validity of the sale price as the property value. That would, of course, violate the *Berea* precept, as explained in *Cummins*, 117 Ohio St.3d 516, 2008-Ohio-1473, 885 N.E.2d 222, at ¶13. But 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.

The Court in *Buckeye Hospitality* relied upon the appraiser's conclusion that the market had changed significantly from the date of sale (pre-recession) to the tax lien date (post-recession) to affirm the BTA's finding that the sale therein was too remote to be indicative of value. The appraiser's opinions in that case were NOT based upon inadmissible hearsay, but upon facts and data perceived by the appraiser. Accordingly, the Court held the appraiser's opinion relating to market conditions was probative to rebut the recency of the sale. Had the appraiser testified that

the market conditions changed solely based upon an out-of-court statement made to him by an individual who did not testify therein, the Court would have been addressing an entirely different issue.

Herein, we are dealing with the admissibility, not the probative nature of the appraiser's testimony. Fried's testimony relating to the nature of the March 2009 sale was based purely upon hearsay statements, rather than facts perceived by her or facts admitted into evidence. Because Ms. Fried relied upon the "rankest form of hearsay" in concluding that the subject sale was between related parties, Ms. Fried's testimony was properly excluded. If Ms. Fried were permitted to serve as a conduit for the testimony of the owner, the BOE would effectively be denied any opportunity to cross examine on the key issue of this case. Because Ms. Fried based her opinion in significant part on facts not in evidence or on facts or data she did not perceive, UTSI failed to establish a proper foundation for admitting Ms. Fried's opinion pursuant to Evid.R. 703. Accordingly, the BTA appropriately determined that her testimony on this issue is inadmissible.

CONCLUSION

For the reasons set forth herein, the Board of Education respectfully requests this Court to affirm the decision of the Board of Tax Appeals that the value of the subject property was \$2,313,500 for tax years 2011, 2012 and 2013. In addition, the Board of Education respectfully requests that this Court affirm the BTA's holding that Ms. Fried's testimony relating to the terms of the March 2009 sale constituted inadmissible hearsay and therefore was properly excluded from the record.

Respectfully Submitted,

/s/ Kimberly G. Allison

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Attorneys for Appellant
Board of Education of the Hilliard City
School District

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing merit brief was served on the following via email transmission this 11th day of May, 2016:

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Christine.Mesirow@OhioAttorneyGeneral.gov
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Attorney for County Appellees

/s/ Kimberly G. Allison

Kimberly G. Allison (0061612)

Board of Revision

Franklin County • Ohio

AUGUST 3, 2011

UTSI FINANCE, INC
12755 EAST NINE MILE RD
WARREN, MI 48089

Complaint No: BOR 09-900095
Parcel: 560-212872
Hearing Date: JULY 25, 2011

Marilyn Brown
Commissioner

Edward J. Leonard
Treasurer

Clarence E. Mingo II
Auditor

Victoria K. Anthony
Clerk

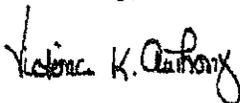
After Consideration of the above Complaint, it is the decision of the Board of Revision the valuation will remain unchanged for tax lien date JANUARY 1, 2009 and carried forward.

The property's new fair market value is \$129,400. The new taxable value is 35% or \$45,290.

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 appeals 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,



Victoria K. Anthony, Clerk
Franklin County Board of Revision

VKA/bn

CC: JEFFREY A. RICH, ESQ.

REFUND POLICY

To ensure the accuracy of all refunds, the Board of Revision **REQUIRES** a copy of the cancelled check(s), escrow statement(s) or other verification of payment of taxes for each tax year under appeal. Please send Attn: Tax Accounting to the address listed below.

Board of Revision

Franklin County • Ohio

AUGUST 3, 2011

UTSI FINANCE, INC
12755 EAST NINE MILE RD
WARREN, MI 48089

Complaint No: BOR 09-900095
Parcel: 560-212873
Hearing Date: JULY 25, 201

Marilyn Brown
Commissioner

Edward J. Leonard
Treasurer

Clarence E. Mingo II
Auditor

Victoria K. Anthony
Clerk

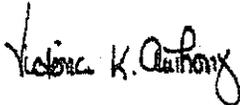
After Consideration of the above Complaint, it is the decision of the Board of Revision that a increase of valuation in the amount of \$336,100 is warranted. This change is effective as of tax lien date JANUARY 1, 2009 and carried forward.

The property's new fair market value is \$2,184,100. The new taxable value is 35% or \$764,440.

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 appeals 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,



Victoria K. Anthony, Clerk
Franklin County Board of Revision

VKA/bn

CC: JEFFREY A. RICH, ESQ.

REFUND POLICY

To ensure the accuracy of all refunds, the Board of Revision **REQUIRES** a copy of the cancelled check(s), escrow statement(s) or other verification of payment of taxes for each tax year under appeal. Please send Attn: Tax Accounting to the address listed below.

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).

APPEARANCES:

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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

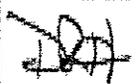
does not include any data to support this conclusion, whether it be by surveys, pared sales analysis, or another form of comparison to show that the market in which the subject is located underwent such significant decline as to render the March 2009 sale remote from the tax lien date. Accordingly, we 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

RULE 703. Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by the expert or admitted in evidence at the hearing.

[Effective: July 1, 1980; amended effectively July 1, 2007.]

RULE 803. Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) **Present sense impression.** A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter unless circumstances indicate lack of trustworthiness.

(2) **Excited utterance.** A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) **Then existing, mental, emotional, or physical condition.** A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) **Statements for purposes of medical diagnosis or treatment.** Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) **Recorded recollection.** A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown by the testimony of the witness to have been made or adopted when the matter was fresh in his memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) **Records of regularly conducted activity.** A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness or as provided by Rule 901(B)(10), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) **Absence of entry in record kept in accordance with the provisions of paragraph (6).** Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a

memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Public records and reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (a) the activities of the office or agency, or (b) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, unless offered by defendant, unless the sources of information or other circumstances indicate lack of trustworthiness.

(9) Records of vital statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirement of law

(10) Absence of public record or entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 901(B)(10) or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) Records of religious organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) Statements in documents affecting an interest in property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the

document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in ancient documents. Statements in a document in existence twenty years or more the authenticity of which is established.

(17) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) Learned Treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) Reputation concerning personal or family history. Reputation among members of the declarant's family by blood, adoption, or marriage or among the declarant's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption or marriage, ancestry, or other similar fact of the declarant's personal or family history.

(20) Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.

(21) Reputation as to character. Reputation of a person's character among the person's associates or in the community.

(22) Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of no contest or the equivalent plea from another jurisdiction), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) Judgment as to personal, family, or general history, or boundaries. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

[Effective: July 1, 1980; amended effective July 1, 2006; July 1, 2007.]