

of Revision (“BOR”), appellee.

The property which is the subject of this appeal is located in the 001-Cincinnati Corp. taxing district of Hamilton County, and is identified on the auditor’s records as parcel number 117-0017-0020.

The value of the property as determined by the Hamilton County Auditor and BOR as of January 1, 2005 was as follows:

	True Value	Taxable Value
Land	\$ 881,600	\$ 308,560
Building	\$ 3,297,800	\$ 1,154,230
Total	\$ 4,179,400	\$ 1,462,790

The appellant challenges the BOR’s findings for tax year 2005, claiming that the values should be decreased to reflect a sale of the property taking place on or about January 15, 2003. The values claimed by the appellant for tax year 2005 are as follows:

	True Value	Taxable Value
Land	\$ 542,140	\$ 189,750
Building	\$ 2,027,970	\$ 709,790
Total	\$ 2,570,110	\$ 899,540

The matter was submitted to the Board of Tax Appeals, pursuant to R.C. 5717.01, upon the notice of appeal, the statutory transcript certified by the Hamilton County Auditor as secretary of the BOR, the record of the hearing before the BTA, and the briefs submitted by the parties. At the hearing scheduled by this board, the BOE and county appellees were represented by counsel. The appellant waived hearing.

The subject property is a shopping center located at 1860 Seymour Avenue, Cincinnati, Ohio. The property transferred on January 15, 2003 for a purchase price of \$2,570,100. That amount is reflected on the conveyance fee statement submitted by HK at the BOR hearing. S.T., Ex. A. The limited warranty deed was also presented to the BOR in support thereof. S.T., Ex. B. HK also presented a written appraisal which valued the subject at \$3,055,880 via the income approach.¹ Upon presentation of the documents to the BOR, that body concluded that value should not be changed because the sale upon which HK relied was “two years from the tax lien date and in that time frame there could have been a major turn about as far as the tenancy and type of income and expenses, ultimately a value that may reflect totally different from what it was in January of 2003.” S.T., Hearing Transcription, at 9. The BOR also expressed the additional concern that “we don’t have anybody to testify as to the background of the sale. What the party’s situation was. If there was any type of relationship. The type of financing. A number of factors that would concern the board.” S.T., Hearing Transcription, at 11. Implicitly, the BOR concluded that the sale did not meet the elements of an arm’s-length transaction.

We begin our review of this matter by noting that a party who asserts a right to an increase or decrease in the value of real property has the burden to prove the right to the value asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336; *Crow v. Cuyahoga Cty. Bd. of Revision* (1990), 50 Ohio St.3d 55; *Mentor Exempted Village Bd. of Edn. v. Lake City Bd. of Revision* (1988), 37

¹ However, the appraisal does not identify the preparer of the document, does not detail or explain the analysis, and does not have a foundation

Ohio St.3d 318. Consequently, it is incumbent upon an appellant challenging the decision of a board of revision to come forward and offer evidence which demonstrates its right to the value sought. *Cleveland Bd. of Edn.*, supra; *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. Once competent and probative evidence of true value has been presented by an appellant, other parties asserting a different value then have a corresponding burden of providing sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn.*, supra.

Therefore, the board is charged with the duty to examine the available record and determine value based upon the evidence before us. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we determine the weight and credibility to be accorded to the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

In order to make an assessment of property at its taxable value, the county auditor must first determine its true value. R.C. 5713.03. It is well established that when property has been the subject of a recent arm's-length sale between a willing buyer and a willing seller, the sale price of the property shall be the true value for taxation purposes. *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979; *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Hilliard City School Dist. Bd. of Edn. v. Franklin*

Cty. Bd. of Revision (1990), 53 Ohio St.3d 57; *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129, at the syllabus.

Accordingly, where there exists an actual sale of real property which is both recent and arm's length, R.C. 5713.03 requires the county auditor to consider such a sale as the best evidence of the property's true value. *Berea*, supra; *Conalco*, supra; *State ex rel. Park Investment Co., v. Bd. of Tax Appeals* (1972), 32 Ohio St.2d 28. In the present matter, the subject property sold on January 15, 2003.

The BOR concluded that the two-year time frame between the tax lien and sale dates could have been subject to major changes in economic conditions. As to the issue of recentness, the Supreme Court has recognized that a sale may be considered recent for purposes of R.C. 5713.03 even though the sale occurs several months either before or after tax lien date. See *R.R.Z. Associates v. Cuyahoga Cty. Bd. of Revision* (1988), 35 Ohio St.3d 198; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *W.S. Tyler Co. v. Lake Cty. Bd. of Revision* (1991), 57 Ohio St.3d 57. In *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36², the court held:

“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. R.C. 5713.03 provides that if there has been ‘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 *** to be the true value for taxation purposes.’ *** One of the factors that must be considered in determining what is ‘a reasonable

² The holding in *New Winchester Gardens Ltd.* was recently revisited and limited in *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473. The Supreme Court, however, did not overrule its holding regarding the application of a sale based upon the recentness of the transaction.

length of time' is 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 changing very slowly." Id. at 44.

A review of the board's decisions reveals that we have both accepted and rejected sales taking place two or more years prior to tax lien. Compare *Gahanna-Jefferson Public Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 17, 1995), BTA No. 1994-T-789, unreported (where the board accepted a sale that took place thirty-three months before tax lien date, after finding that there was no material change in the value of the property between the tax lien date and the sale date) with *Pavic v. Lake Cty. Bd. of Revision* (Feb. 1, 2008), BTA No. 2006-M-970, unreported (where the board rejected a sale price garnered in 2002 as indicative of value for tax lien date 2005). In both cases, however, the critical inquiry was into the economic climate in which the sales took place and whether the market was rapidly changing during the period of time between sale date and tax lien date.

Here, we have no evidentiary indication of the market conditions surrounding the sale and the tax lien date and whether the market was changing in a manner that would affect the utility of the sale price as an indication of value. In *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059, the Supreme Court held that this board improperly shifted the burden of persuasion when we did not accept evidence of an arm's-length transaction that had not been rebutted by the opposing party. In that case, the property owner had presented sale evidence that had been unrebutted by the board of education. In this

appeal, the sale evidence is presented by the owner, but neither the BOE nor the county appellees has brought forth evidence of changing market conditions that would allow this board to conclude that the sale price is not the best evidence of value.

The BOE counsel also contended that the “sale was part of another, presumably larger, sale” and that “[n]o purchase agreement was ever provided. No testimony was ever given from a buyer or seller.” H.R. at 6. Counsel further noted that HK did not answer the BOE’s discovery request and argued that it was not “appropriate for an owner to simply duck discovery, refuse to cooperate, refuse to give anything knowing they have a conveyance fee statement.” BOE’s May 22, 2008 brief, at 1; H.R. at 10. The county appellees also argued that there were questions raised about the sale and noted that their discovery requests were unanswered by HK. BOR’s April 11, 2008 brief, at 1-2.

Thus, the BOE and county appellees contend that the sale is in controversy, arguing that it is part of a larger sale and that HK must prove that the sale is truly arm’s length. We disagree. At the BOR hearing, HK presented the BOR with a conveyance fee statement and limited warranty deed. The BOE presented no evidence regarding the sale at the BOR hearing, nor did the BOE or county appellees present evidence (other than copies of their unanswered discovery requests) at the BTA hearing. Ex. A, Ex. 1. The BOE counsel simply made the statement, at the BOR hearing, that in her “opinion, for what its worth, ... since the school board is here and asking for more information, they have to establish the arms-length nature of the sale. Of course the concern is that this is an older sale...” S.T., Hearing Transcription at 8.

We fail to see how the mere presence of the BOE at a BOR hearing, and its subsequent request for additional sale information, shifts the burden of proof back to the appellant in such a case. Further, we note that neither the BOE nor the county appellees filed motions to compel with the BTA regarding the unanswered discovery requests which are highlighted by the appellees.

As to the BOE assertion, in its brief, that the sale was part of a larger sale, we do not find this to be in evidence before us. *Id.* at 1. We note that HK's counsel simply stated that "[t]he sale in question ... was part of a sale from another institutional investor to HK New Plan." S.T., Hearing Transcription at 3. There was no other information regarding this comment in the record. We do not find this statement alone sufficient to invalidate the subject sale.

We have previously held that evidence of a sale exhibited through a deed or conveyance fee statement, not otherwise controverted, is competent and probative evidence of value in an arm's-length sale. *Clearview Bd. of Edn. v. Lorain Cty. Bd. of Revision* (May 1, 1998), BTA No. 1996-M-1192, unreported; *Bounds v. Butler Cty. Bd. of Revision* (Aug. 7, 1992), BTA No. 1990-M-838, unreported. The warranty deed does not disclose any association or condition that would impact the validity of the sale. S.T., Ex. B.

While some questions were raised about the sale at the BOR hearing, HK met its burden of proof in submitting its conveyance fee statement and limited warranty deed. The BOE and county appellees have only brought forth conjecture and

suppositions regarding the sale. There has been no credible evidence presented by these parties.

Considering the record before us and based upon a preponderance of competent evidence, this board finds that the correct values of the subject property for tax year 2005 are as follows:

	True Value	Taxable Value
Land	\$ 881,600	\$ 308,560
Building	\$ 1,688,500	\$ 590,980
Total	\$ 2,570,100	\$ 899,540

It is the order of the Board of Tax Appeals that the Auditor of Hamilton County list and assess the subject real property in conformity with this decision and order. It is further ordered that this value be carried forward in accordance with the law.

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