

decision of the Hamilton County Board of Revision. In said decision, the board of revision determined the taxable value of the subject real property for tax year 2006.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the county board of revision, and the record of the hearing before this board.

The subject real property, a mixed office/retail commercial building, is located in the 001-Cincinnati Corp-Cincinnati School District taxing district, Hamilton County, Ohio, and appears on the auditor's records as parcel number 041-0003-0011. The total true value of the parcel, as determined by the auditor and by the board of revision, are \$1,300,000 and \$1,800,000, respectively. The appellant claims that the subject's true value is \$1,700,000 and contends that the board of revision has overvalued the parcel in question by relying upon the sale of the subject in September 2006 as an indicator of its value, without adjusting the sale amount for a \$100,000 repair credit received at the time of closing. H.R. at 9.

Before turning to the merits of the instant matter, we will review how this case came to this board on appeal. Specifically, the Cincinnati School District Board of Education filed an original complaint against the valuation of the subject property with the Hamilton County Board of Revision seeking to increase the subject's value to reflect its sale price obtained in September 2006. A counter-complaint was filed by the property owner, seeking a valuation of \$1,400,000, based upon the property's "appraised & fair market value." S.T. at Ex. II. The board of revision increased the valuation of the subject property to reflect the \$1,800,000 sale price. The

property owner, dissatisfied with the BOR's decision, appealed such determination to this board.

At the outset, we note the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 337, and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, 495, wherein the Supreme Court held that an appealing party has the burden of coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence which rebuts appellant's evidence of value. *Id.*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

As we consider the valuation question before us, we acknowledge that R.C. 5713.03 provides, in pertinent part, that:

“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 *** to be the true value for taxation purposes.”

The Ohio Supreme Court has consistently held that the best evidence of true value of real property is an actual, recent, arm's-length sale. Specifically, in *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, the Supreme Court held “that when the property has been the subject of a recent arm's-length sale between a willing seller and a willing buyer, the

sale price of the property shall be ‘the true value for taxation purposes.’ R.C. 5713.03.” *Berea*, at 5. See, also, *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Hilliard City School Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. An arm’s-length sale is characterized by these elements: it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest.” *Walters v. Knox County Bd. of Revision* (1988), 47 Ohio St.3d 23.

It is also well established that when a sale occurs, there is a rebuttable presumption the sale price reflects the true value of the property in question. Consequently, a rebuttable presumption extends to all of the requirements which characterize true value. It is then the burden of the party who claims that a sale is other than arm’s length to counter such presumption. However, the burden of persuasion does not change, as it is still on the appealing party to establish, through the presentation of competent and probative evidence, a different value than that found by the board of revision. See *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325; *Bd. of Edn. of the Columbus City School Dist. v. Franklin Cty. Bd. of Revision* (Nov. 28, 1997), BTA No. 1996-S-93, unreported.

Initially, we have reviewed the evidence of sale of the subject, the conveyance fee statement, as well as Mr. Spiros’ testimony before this board regarding the sale. S.T. at Ex. IV; H.R. at 9-11. We note that the property owner never disputed the arm’s-length nature of the subject sale, either before this board or the

BOR. Thus, based upon the foregoing, this board has concluded that the subject sale had all the indicia of, and consequently was, an arm's-length¹ sale.

In support of its claimed value, the property owner's witness, Marc Spiros, a member of the limited liability company owner, offered several exhibits into evidence: Exhibit 1, subject's tax bill; Exhibit 2, settlement statement from sale; Exhibit 3, purchase agreement from sale; Exhibit 4, listing of "similar" properties that are for sale or have sold in the last twelve to eighteen months; Exhibits 5-8, real estate broker's opinion of value and supporting documentation for the opinion; Exhibit 9, media report on commercial market status across the country. H.R. at 9-11. Before we consider such exhibits, this board must first determine whether Exhibits 2 and 3 will be received into the record. Counsel to the county appellees and appellee board of

¹ In considering whether such sale can be considered recent enough to be indicative of the value of the subject, we note that the Supreme Court has recognized that a sale may be considered recent for purposes of R.C. 5713.03 even though the sale occurs 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. Clearly, the instant sale, which occurred within nine months of the tax lien date under consideration, constitutes a recent sale.

With regard to whether the subject sale took place in an open market, we note that based upon testimony before the BOR, it appears that the sale of the subject property did not arise from a real estate listing on the open market, but rather from the prospective purchaser's inquiry to the then owner about the possibility of selling. S.T. at Hearing Transcript. We are mindful that the Supreme Court, in *Walters*, supra, when considering what constitutes an arm's-length sale, indicated that arm's-length transactions "generally" take place in an open market, thus not necessarily "always." This board has repeatedly held that just because a sale was not advertised to the general public, it is not necessarily rendered non-arm's length. *Beatley v. Franklin Cty. Bd. of Revision* (June 18, 1999), BTA Nos. 1997-M-262, 263, unreported; *Bd. of Edn. of Plain Local Schools v. Franklin Cty. Bd. of Revision* (June 9, 1995), BTA No. 1994-S-361, unreported. See, also, *Willoughby-Eastlake City School District Bd. of Edn. v. Lake Cty. Bd. of Revision* (May 20, 2005), BTA No. 2003-B-1654, unreported; *Dublin City School District Bd. of Edn. v. Franklin Cty. Bd. of Revision* (May 5, 1995), BTA No. 1993-T-1107, unreported, affirm'd (Mar. 7, 1996), Franklin App. No. 95APH06-718, unreported; *MACQ, Inc. v. Marion Cty. Bd. of Revision* (Sept. 11, 1998), BTA No. 1996-K-1457; *Poley v. Montgomery Cty. Bd. of Revision* (Sept. 24, 2004), BTA No. 2003-M-1784, unreported. There is no indication in the record that by not being offered on the market, the resultant sale price was based on non-market-driven forces, as it was fully negotiated between the parties to the contract.

education objected to admitting such exhibits into evidence pursuant to the provisions of R.C. 5715.19(G) because the documents were available to the property owner at the time of the BOR proceedings, but not offered at such time. H.R. at 12. Mr. Spiros admitted before this board that although appellant had exhibits 2 and 3 in its possession at the time of the BOR hearing, it did not bring them to the hearing. H.R. at 22.

The basis for the objections to Exhibits 2 and 3, R.C. 5715.19(G), provides:

“A complainant shall provide to the board of revision all information or evidence within the complainant’s knowledge or possession that affects the real property that is the subject of the complaint. A complainant who fails to provide such information or evidence is precluded from introducing it on appeal to the board of tax appeals ***, except that the board of tax appeals *** may admit and consider the evidence if the complainant shows good cause for the complainant’s failure to provide the information or evidence to the board of revision.”

In considering the foregoing, the Supreme Court has held that “[t]his provision requires a complainant before the board of revision to submit all pertinent information affecting the property in question within his knowledge or possession at that time.” *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120, 121. Appellant certainly could have provided the settlement statement and the purchase agreement to the board of revision, but it did not do so. Accordingly, we find that appellant has not demonstrated good cause why it did not provide Exhibits 2 and 3 to the BOR, and, as such, Exhibits 2 and 3 will not be received into evidence herein. See *CASA 94, L.P. v. Franklin Cty. Bd. of Revision* (2000), 89 Ohio St.3d 622.

Mr. Spiros argued before this board that the subject's value should be \$1,700,000 based upon a \$100,000 repair credit given by the seller at the closing on the subject property. H.R. at 9, 20. He also claimed that the exhibits concerning the real estate market, Exhibits 4-9, also provide further support for his position that the subject's value should be less than that which the BOR determined. H.R. at 11.

Considering all of the foregoing, we find that the appellant has not rebutted the presumption that the evidence of the recent arm's-length sale is the best evidence of the subject's value as of January 1, 2006. There is no substantive evidence in the record to support appellant's contention that a \$100,000 credit was given to the buyer at closing that could warrant a reduction in valuation by such amount. Since we have determined that the subject sale was arm's length, we need not consider any other evidence of value, appraisal or otherwise. See *Berea*, supra. Accordingly, based upon the preponderance of evidence currently before this board, we have concluded that the subject's value as of January 1, 2006, shall remain that which the board of revision determined, as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 243,000	\$ 85,050
Bldg	\$ 1,557,000	\$ 544,950
Total	\$ 1,800,000	\$ 630,000

It is the decision and order of the Board of Tax Appeals that the Hamilton County Auditor shall list and assess the subject property in conformity with this decision.