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Abbreviations: "P/O" = Property Owner
"BOR" = Board of Revision
"CAV" = Complaint Against Valuation
"BOE" = Board of Education
"BTA" = Board of Tax Appeals
"TY" = Tax Year

2018 Ohio Supreme Court Round-Up
Real Property Tax/Valuation Appeals

1. *N. Canton City School Dist. Bd. of Edn. v. Stark Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-1 (January 2, 2018)

Facts: In 2011, this 36-unit apartment complex was offered for sale at a foreclosure action at which the minimum bid was $1,400,000; no bids were received. The Receiver then hired a national brokerage firm to market the property. At least 6 bids, ranging from $820,000 to $1,200,000, were received; the highest bid was accepted – the buyer had no relationship to the seller, lender or receiver. The foreclosure court approved the sale, finding it to be "commercially reasonable." For TY 2012, the Auditor valued the property at $1,841,300. P/O filed a CAV to reduce value to the $1,200,000 purchase price. BOR ruling: placed value at $1,301,500 (purchase price plus cost of post-sale repairs made by P/O). Both P/O and BOE appealed to the BTA. BTA ruling: concluded that the transaction was a "forced sale" and rejected all of the P/O's evidence about the circumstances leading up to the sale and the commercial reasonableness of the sales price; the BTA reinstated the Auditor's value. P/O appealed to the Supreme Court.

Supreme Court: P/O requested that the Court adopt either the sales price or, alternately, reinstate the BOR's value. No dispute exists that this was a R.C. § 5713.04 "forced sale" since it was conducted in the context of a mortgage foreclosure proceeding; the question is whether the P/O presented probative evidence to establish that the sale had the characteristics of an arm's-length transaction and the sale price was reflective of the property's market value. Holding: BTA erred in disregarding the P/O's evidence showing the real estate's broker's efforts to market the property, the number of bids received, and how close the ultimate purchase price was to the foreclosure sale's minimum bid amount. It criticized the BTA saying, "In effect, the BTA adopted a conclusive presumption that the sale was not at arm's length and thus not indicative of value. In doing so, [the BTA] failed to consider that the presumption had been rebutted as required by our holding in *Olentangy Local Schools* [141 Ohio St.3d 243]." The Court noted that former R.C. § 5703.13 [in effect through TY 2012] mandated that the sales price be adopted as the tax value, leaving no discretion to consider the additional value created by the post-purchase repairs made by the P/O.

Outcome: Reversed and remanded with instructions to set value at the $1,200,000 purchase price.

2. *Notestine Manor, Inc. v. Logan Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-2 (January 2, 2018)

Facts: This 11-unit residential structure was built for very low-income elderly individuals under U.S. HUD's Section 202 program, which provides "capital assistance" to cover construction costs as well as "project rental assistance". The building was approximately 67% complete as of the January 1, 2013 tax lien date. Construction costs totaled $1,500,000 of which U.S. HUD contributed about $1,300,000. The Auditor valued the property at $811,120 for TY 2013. P/O, which was a charitable non-profit, filed a CAV asking that the value be lowered to $165,000. P/O's President testified at the hearing about an income approach valuation that his company had created. BOR ruling: Auditor's $811,120 value retained. P/O appealed to the BTA. P/O's appraiser presented a report that relied solely an income-capitalization approach based on *actual* restricted rents and actual & market-based expenses. The appraiser concluded to a $75,000 value. BTA ruling: reversed BOR and accepted the appraiser's $75,000 value. County appealed to Supreme Court.

Supreme Court: Addressing the standard of review issue first - the Court's explained that is review of legal issues is *de novo*, not deferential. If no legal error, then the BTA's decision concerning weighing of appraisal evidence is done under a highly deferential abuse-of-discretion standard. Moving on, the Court clarified its earlier decision in *Woda Ivy Glen*, 121 Ohio St.3d 175 – in *Woda*, the Court held that significant tenant and rent restrictions recorded in a chain of title as prerequisites for low-income housing tax credits ("LIHTC") were governmental restrictions on land use and that the property should be valued as at its highest and best use, i.e., a low-income-housing development. The Court establishes a "guiding principal" that the "valuation method must account for the 'affirmative value" of governmental subsidies, i.e., the tendency of governmental subsidies to inflate the value above what the market would otherwise bear", and that such an "affirmative value must be adjusted out of the property valuation." For example, with Section 8 tenancies, using market rent removes the inflationary effect on values caused by governmental subsidies. In this case, however, the Court opined that there was no evidence that any adjustment from contract rents to market rents would eliminate the "affirmative value" of the governmental subsidies, and thus it blessed the P/O's appraiser's use of the lower contract rents.

The County also argued that HB 487's amendment to O.R. § 5713.03 (requiring determination of market value "as if unencumbered") provided an additional basis for disregarding the restrictive covenants in valuing this property. The Court held that this as an overly expansive view of the statute and not the legislature's intent to supersede the case law's "repeated acknowledgement that the effect of governmentally imposed restrictions should be taken into account when determining tax value." Thus, zoning restrictions and LIHTC restrictions (even though self-imposed by the P/O) can be taken into account.

Finally, the Court commented that the issue of the unfair tax burden placed on other taxpayers in the community as a result of highly restricted low-income housing properties having nominal tax values is a matter to be resolved by the General Assembly, not the court.

Outcome: Affirmed BTA's decision.

3. *Life Path Partners, Ltd. v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-230 (January 16, 2018)

Facts: If a P/O's CAV is not acted on within 90 days, the CAV automatically becomes a "continuing complaint" allowing the BOR to consider the property's value for subsequent tax years. The P/O here filed a CAV challenging the TY 2009 value of a 17-acre parcel. In November 2012, the parties entered into a settlement agreement at the BTA level that fixed the property's value for TYs 2009-2011 but not 2012. TY 2012 was a reappraisal year in Cuyahoga County, and the normal deadline to file a CAV to challenge the TY 2012 was March 31, 2013. In October 2014 - about 18 months after that deadline - the P/O sent a letter to the BOR requesting that it convene a new hearing to consider the property's TY 2012 value under the continuing complaint provision of ORC § 5715.19(D) maintaining that the BOR had not complied with ORC §5715.19(C)'s aspiration that the BOR make its decision within the 90 days and because the case was still pending during 2012. BOR ruling: P/O's "continuing complaint" was untimely and dismissed case. P/O appealed to BTA. BTA ruling: Although it recognized that ORC § 5715.19(D) does not contain any language about a deadline for invoking the continuing complaint jurisdiction, the BTA reasoned that allowing the P/O to proceed would produce an "absurd result" and that jurisdiction could theoretically be invoked "in perpetuity". P/O appealed to Supreme Court.

Supreme Court: Court looked at the plain language of ORC § 5715.19(D). The statute clearly states that, if the BOR does not make a determination within the 90-day period set forth in ORC § 5715.19(C), the CAV "shall be continued . . . as a valid complaint for any ensuing year until [the] complaint is finally determined." Because the CAV was not finally determined until 2012, the BOR still had jurisdiction over TY 2012. Nothing in the statute authorizes a dismissal for being dilatory in requesting the BOR to exercise its continuing complaint jurisdiction. "If the lack of a deadline is a problem," the Court commented, "it's up to the General Assembly to make an easy fix". The Court also observed that while the mechanics of asserting continuing-complaint jurisdiction are less than clear, the P/O's method of writing a letter was acceptable.

Outcome: Reversed and remanded to the BOR to make a determination on the merits of the case.

Practice Note: Property owners who filed cases that were not resolved within 90 days may be able to invoke the BOR's continuing complaint jurisdiction to consider the property's valuation for later tax years even if the property owner missed the regular March 31st deadline to file a 2nd CAV. If you have a situation meeting this criterion, please call our firm quickly before the Ohio General Assembly snaps shut the window of opportunity recognized in *Life Path Partners*.

4. *MDM Holdings, Inc. v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-541 (January 24, 2018)

Facts: Much like *Life Path Partners* (above), this case focuses on the plain language of ORC § 5715.19 (D).

Fiscal Officer valued subject property at $688,300 for TY 2011. P/O filed a CAV, requesting decrease to $463,000. The BOR reduced the value to $605,000 but took more than 90 days from the date of filing to issue its decision. P/O appealed to BTA. In February 2014, P/O voluntarily dismissed its complaint.

On January 15, 2015, P/O filed a request letter with BOR asking the BOR to invoke its continuing jurisdiction over TY 2012 and hold a hearing. BOR ruling: dismissed CAV based on 30-day rule (parties must appeal within 30 days of the final decision on the original CAV. P/O appealed to BTA. BTA ruling: affirmed dismissal, but because P/O did not request continuing jurisdiction until after the end of the year in which the final decision on the original CAV was rendered (2014). P/O appealed to Supreme Court.

Supreme Court: The Court again analyzed only the plain language of ORC § 5715.19(D), which clearly states that, if the BOR does not make a determination within the 90-day period set forth in ORC § 5715.19(C), the CAV "shall be continued . . . as a valid complaint for any ensuing year until [the] complaint is finally determined." Here, the BOR and BTA erred in dismissing the CAV as being untimely. The Court refused to impose a deadline that runs contrary to the plain language of the statute – "Neither the BOR nor the BTA nor this court may establish a deadline contrary to the plain language of the statute. The BOR had jurisdiction to consider [P/O's] request for tax year 2012." In other words, until the Ohio General Assembly addresses the timeliness loophole of continuing complaint jurisdiction, the Court will not dismiss a continuing complaint that falls within the broad guidelines of the statute.

Outcome: BTA's decision reversed and case remanded to BOR for further proceedings.

5. *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2018-Ohio-918 (March 13, 2018)

Facts: Subject property was a 55.61-acre unimproved piece of agricultural land. Auditor valued property at $328,700 for TY 2011. P/O filed CAV requesting value of $165,000. BOE filed counter-CAV requesting that Auditor's value be retained. P/O presented a single printout of the only comparable sale he could find within 10 miles of the property. The comparable sale printout contained a notation that sale was "not arm's length" because the vice president for both the purchasing entity and selling entity was the same person. BOE presented no evidence. BOR ruling: issued a partial reduction based on "the testimony presented" but did not elaborate as to how it reached its value conclusion (although it appeared that it took the per acreage value from the P/O's comparable sale and applied it to the subject). BOE filed an appeal to BTA. BTA ruling: adopted the BOR's valuation and denied the BOE's claims by citing the *Bedford* rule.

Supreme Court: Court held that the BTA misapplied the *Bedford* rule. The rule provides that "when the BOR has reduced the value of the property based on the owner's evidence, that value has been held to eclipse the auditor's valuation, and the BOE as the appellant before the BTA may not rely on the latter as a default valuation." The BTA misapplied the rule for 2 reasons. First, from a procedural standpoint, the BOE had actively opposed the P/O's evidence at the BOR because the comparable sale was not an arm's-length sale. The BTA had to address the BOE's position on that matter and failed to do so. Second, from a substantive standpoint, the comparable sale did not constitute evidence of market value (unless more information had been provided to support that value). Thus, the *Bedford* rule could not be applied where the BOR's decision was marred by a legal error.

Outcome: Reversed and county Auditor's valuation was reinstated.

6. *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-919 (March 13, 2018)

Facts: Subject property was a 1.5-acre parcel improved with a 19,700-sf shopping center. Auditor's TY 2012 value was $1,300,000. P/O, who acquired property at a 2013 sheriff's sale for $520,100, filed a CAV requesting a reduction to $700,000. P/O presented an appraisal report at BOR hearing concluding to value of $700,000. Appraisal report also included a copy of the sheriff's-sale appraisal, which assigned the property a value of $780,000 as of June 13, 2012. BOR ruling: reduced value to $780,000, noting the sheriff's-sale appraisal value. The BOR disregarded the sale price of the sheriff's sale because it was not an arm's-length transaction. The BOE appealed to BTA. The BTA was critical of P/O's appraiser's sales comparison approach because he never verified whether his comparable sales were arm's-length sales and did not view interiors of comparables. He also did not provide any analysis of how he derived his capitalization rate. BTA ruling: determined that subject property was overvalued, but that there was no other evidence on the record from which BTA could independently determine value. It vacated the BOR's determination of value and remanded the case for the BOR to make a finding of value based upon competent and probative evidence. The BOE appealed – asserting that BTA erred in remanding the case after determining that there wasn't enough evidence to perform an independent evaluation and that the BTA should have reinstated the Auditor's original valuation.

Supreme Court: The Court held that BTA's reliance on the *Bedford* rule was improper because the BOR's determination of value was "infected with legal error." The BOR valued the property based off of a sheriff's-sale appraisal that opined the value as of June 13, 2012 (not the January 1, 2012 tax lien date). While the BOR could certainly utilize factual information contained in the sheriff's-sale appraisal, it could not furnish a basis for valuing the property as of the tax lien date on the sheriff's sale appraisal – which is what the BOR did in this case. The Court also agreed with the BOE that, even though some evidence negated the Auditor's original valuation, it was proper to revert to that valuation because the BTA found that the P/O had not proved a lower value and that there was no other evidence from which the BTA could independently determine value.

Outcome: BTA's decision reversed with instructions to reinstate the county Auditor's original valuation.

7. *Glyptis v. Cuyahoga Cty. Bd. of Revision,* Slip Opinion No. 2018-Ohio-1427 (April 17, 2018).

Facts: Subject property is a lake house that the P/O purchased in 2011 for $2.5M. In early 2012, the property was damaged by a storm and P/O filed a CAV for TY 2012. The BOR advised him that, because the damage occurred after the tax lien date, it wouldn't be considered for that year and that he should file a CAV for TY 2013. BOR retained Fiscal Officer's value for TY 2012. The P/O filed a CAV for TY 2013 and asserted that he could file a second CAV in the same triennium because the "property lost value due to casualty." BOR ruling: issued a "no change" ruling. P/O appealed to BTA and presented an appraisal report that concluded to a value of $1.7M. The County claimed that BTA didn't have jurisdiction because BOR had already considered the

evidence of the storm damage at the TY 2012 hearing. BTA ruling: rejected County's jurisdictional claim and adopted P/O's appraisal value of $1.7M. The County appealed to Supreme Court.

Supreme Court: The Court established the factors that must be present for the "casualty-loss exception" to apply: (i) second-filed CAV must assert that casualty loss exception applied. P/O did that on CAV; (ii) event triggering exception must have occurred after the tax lien date of the year for which the earlier CAV was filed. Storm was after January 1, 2012; (iii) triggering event must not have been "taken into consideration with respect to the prior CAV." This third factor was the main issue. The Court held that even though the evidence of the storm was presented at the TY 2012 hearing, the BOR clearly and correctly did not take the evidence into consideration for TY 2012. Therefore, the County's jurisdictional claim was rejected.

Outcome: BTA decision affirmed.

8. *Pavilonis v. Cuyahoga Cty. Bd. of Revision,*
Slip Opinion No. 2018-Ohio-1480 (April 19, 2018)

Facts: Subject Property was a small residential property valued by Fiscal Officer at $48,000 for TY 2013. P/O filed a CAV to decrease value to $12,000. P/O had purchased property from an entity in which her husband was a member (but she was not). Husband's company had filed CAV for TY 2012. P/O sent her husband and an appraiser to BOR hearing. Appraiser opined to a value of $18,000. BOR ruling: rejected evidence because it viewed CAV as an improper 2nd filing within same triennium. P/O appealed. BTA ruling: reversed BOR decision because CAVs "were filed by two separate complainants." County appealed to Supreme Court.

Supreme Court: The first issue raised by the County on appeal was that BTA did not have jurisdiction over CAV because of ORC § 5915.19(A), which reads: "no person . . . shall file a complaint against the valuation or assessment of any parcel that appears on the tax list if it filed a complaint against valuation or assessment of that parcel for any prior tax year in the same interim period." The Court rejected this claim because of the plain reading of the statute – the P/O that filed the TY 2013 CAV did not file the TY 2012 CAV.

The second issue raised by the County was that the P/O's husband had engaged in the unauthorized practice of law by directly examining the appraiser and making legal arguments on behalf of his wife. The Court held that, while the husband may have engaged in the unauthorized practice of law, it ultimately didn't impact the BTA's decision to assign value based on the appraiser's report and testimony – basically, it was irrelevant for the purposes of the BTA's decision. Furthermore, the County did not raise an objection and it permitted the husband to take these legal actions in the first place. Thus, it would be self-serving to allow the County to benefit from its own mistake.

Outcome: BTA's decision affirmed.

**9. *Schutz v. Cuyahoga Cty. Bd. of Revision*,
Slip Opinion No. 2018-Ohio-1588 (April 25, 2018)**

Facts: P/O challenged the Fiscal Officer's $104,100 value for TY 2012 of his residential property. At the BOR, P/O presented evidence showing he had purchased the property for $14,300 in January 2009 from a bank. Allegedly, there were multiple housing code violations at the time of purchase. P/O requested that the value be lowered to $40,000, representing the purchase price plus cost of improvements made since the purchase. P/O was unsuccessful in getting a $56,000 loan secured on the property or selling it for $70,000. BOR ruling: Retained Auditor's value. P/O appealed. At the BTA, the P/O presented evidence showing that he and the Fiscal Officer had stipulated prior years' value at $14,300. He also provided lists of purported sales without explaining where the source of the information came from or how/if he made any adjustments to the comparables. BTA ruling: Found that the January 2009 sale was "too remote", and that P/O failed to present competent appraisal evidence attested to by a qualified expert. BTA affirmed the BOR's decision. P/O appealed.

Supreme Court: Deferred to the BTA's finding that the January 2009 was too remote because it was supported by the record. The Court reviewed the question regarding the sufficiency of the P/O's other evidence *de novo*. The Court noted that the County Appellees only had to present evidence supporting the Fiscal Officer's value if the P/O first carried his burden of presenting evidence of a value different from the Fiscal Officer's. Where no recent, arm's-length sale having been shown, the advocate is not required to present an expert witness, rather a non-expert owner's opinion may be sufficient. A P/O can express his opinion of value. Also documenting the purchase price of land and the cost of improvements may be sufficient, but not here because the sale was not recent and, therefore, could not be used as a foundation for determining value in this way. The Court held that the P/O's evidence was not legally sufficient to allow the BTA to perform an independent valuation.

Outcome: The BTA's decision leaving the original value unchanged was affirmed.

**10. *Bronx Park S. III Lancaster, L.L.C. v. Fairfield Cty. Bd. of Revision*,
Slip Opinion No. 2018-Ohio-1589 (April 25, 2018)**

Facts: The subject property was a 13,650 sf drugstore leased to Walgreens Company for 75 years. Auditor valued the property at $1,084,660 for TY 2014. Bronx Park paid $5,641,100 for the property in July 2014, which caused the BOE to file a CAV asking that the value be increased to the purchase price. BOR ruling: Raised adopted the sales price. P/O appealed. BTA ruling: P/O's appraiser contended that the sales price represented the property's "leased fee" value. The appraiser testified that Bronx Park representatives had never visited the property before purchasing it; that they were motivated by the cap rate, the quality of the tenant and the long-term lease. The appraiser also testified that the rental rate was double typical market rentals. The P/O's appraiser concluded to a value of $1,660,000. The BTA retained the BOR's $5,641,100 value. P/O appealed.

Supreme Court: Begins by observing that this case closely mirrors the facts and procedural history of *Terraza 8 L.L.C v. Franklin Co. BOR*, 150 Ohio St.3d 527. *Terraza* required

consideration not only of the sales price but any other evidence the parties present that is relevant to the value of the unencumbered fee simple estate.

Outcome: Because the BTA did not consider the appraisal evidence proffered by the P/O, the case was remanded to BTA for consideration of that evidence.

11. *Arbors E. RE, L.L.C. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-1611 (April 26, 2018)

Facts: County Auditor valued a nursing home at $4,000,000 for TY 2011. Lessee of nursing home purchased the facility in April 2011 for $7,490,000. BOE filed a CAV seeking to raise value of the nursing home to the purchase price. P/O filed a Counter-CAV seeking to reduce value to $3,500,000. At the BOR, the P/O's appraiser testified that the transfer was "of a going concern"; and he allocated the purchase price amongst the real estate, the FF&E, the Certificate of Need, and business goodwill. "Conspicuously absent was any evidence of an allocation of the purchase price to multiple assets made contemporaneous with the sale." After the hearing, the P/O submitted additional documentation. BOR ruling: Allocated about $287,100 of the purchase price to FF&E, resulting in a property value of $7,202,900. P/O appealed. Neither party submitted any additional evidence. The BTA noted that the documents submitted by the P/O after the BOR hearing were not included in the statutory transcript even though the BOR had relied on some of those documents. BTA ruling: Reinstated the $7,490,000 purchase price as the property's value as (i) the documentation submitted reflected a real estate value only and (ii) there was no contemporaneous allocation of the purchase price.

Supreme Court: The law favors a proper allocation of a lump-sum purchase price over an appraisal ignoring the contemporaneous sale. The BTA failed to avail itself of methods to ensure completeness of the record. The Court noted that the sale of a congregate-care facility was the sale of both real estate and business activities. The BTA erred by holding that any allocation to goodwill is improper. After the fact appraisal evidence can be used to show that the original allocation shown on the conveyance fee statement did not properly reflect the true value of the real estate component of the sale (citing *Buckeye Terminals, L.L.C. v Franklin Co. BOR*, 152 Ohio St.3d 86).

Outcome: Case was remanded so that the BTA could supplement the record with the omitted documents or any other evidence the BTA deems material, and then determine if any portion of the purchase price was for non-real estate assets, and, if so, allocate the sale price.

12. *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-1612 (April 26, 2018)

Facts: Auditor valued a sit-down restaurant at $1,250,000 for TY 2012. P/O filed a CAV seeking to reduce value to $750,000. BOE filed Counter-CAV to retain Auditor's value. At BOR, P/O presented a certified copy of the deed stating that property was transferred on December 31, 2013 and a certified copy of the conveyance fee statement showing that the property conveyed for $700,000 on January 21, 2014. No witnesses were presented to testify as to the arm's-length

nature of the sale. BOR ruling: Retained Auditor's value because no witness had appeared on behalf of P/O to testify about the sale. P/O appealed to BTA, but waived its appearance and did not present any new evidence. BOE asserted that P/O had to present witness to testify about sale and that the sale was too remote to be considered "recent". BTA ruling: Adopted BOR's decision because sale was too remote and, relying on *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, P/O failed to present evidence showing that either market conditions or the property's character had remained same between sale and tax lien date. P/O appealed to Supreme Court.

Supreme Court: There were four (4) issues before the Court:

First, whether the effective date of the sale was December 31, 2013 (deed date) or January 21, 2014 (conveyance fee date) – in other words, was the sale slightly less or slightly more than 24 months after tax lien date? The Court held that, pursuant to *HIN, L.L.C.*, the effective date of the sale is the date on the conveyance fee statement. Thus, the sale was slightly more than 24 months after the tax lien date.

The next two issues went hand-in-hand. Whether the BTA erred in concluding that the sale was too remote? And, whether the BTA misapplied *Akron* by holding that P/O was required to provide additional evidence demonstrating that sale was recent even though it was 24+ months after tax lien date? Here, the Court held that, presented certified copies of the deed and conveyance fee statement, the P/O had created a rebuttable presumption that the BOE must overcome and show that the sale was not arm's-length or the best indicator of market value. The BOE relied upon *Akron*, which established a 24-month rule for a sale that predated the tax lien date of a reappraisal year by 29 months was too remote. The Court held that the fact there was a reappraisal year in between the sale and tax lien date was an important distinction because that meant the Auditor's office had already considered the sale. Here, the sale occurred *after* the tax lien date. Further, the Court concluded that the BTA was wrong to apply the 24-month rule from *Akron* and that a sale could still be presumed recent when it postdates the tax lien date by 24+ months.

Lastly, the BOE argued that, if the Court did not endorse the BTA's decision, the case should be remanded to allow the BOE to present additional evidence since it had relied upon the BTA's precedent applying *Akron*. The Court held that this argument carried little weight.

Outcome: Case remanded to BTA with instructions to use sale price for TY 2012.

13. *Lowe's Home Ctrs., Inc. v. Washington Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-1974 (May 16, 2018)

Facts: This case involves the same property as the case from 2016. Subject property is a Lowe's that was valued by the Auditor at $9,595,570 for TY 2013. P/O filed a CAV and submitted an appraisal requesting that the value be increased to $5.7M; the BOE filed a counter-CAV. BOR ruling: retained the Auditor's valuation. P/O appealed to BTA. BOE submitted an appraisal concluding to $8.8M. P/O's appraiser examined both properties sold without a lease in place and with a lease in place and made adjustments when appropriate. BOE's appraiser analyzed mostly 1st generation properties with leases in place and made adjustments where necessary. BTA ruling: adopted BOE's appraisal because P/O's appraisal relied on too heavily on second-generation sales. P/O filed a motion for reconsideration in light of *Steak 'N Shake*, a decision

issued a week before the BTA's ruling. However, before the BTA could grant the motion, the P/O appealed to Supreme Court because they were up against a statutory deadline to appeal.

Supreme Court: First issue is whether the BOE's reliance on leased fee sales was proper. Court agrees that the HB 487's amendment to R.C. § 5713.03 "means that the BTA has to determine the value of the subject property's unencumbered fee-simple estate" and that a lease is, indeed, an encumbrance. However, it points out that the BOE's appraiser advised that he made adjustments to his comparables so that they were valued as if unencumbered. Also, the Court clarifies that the statute applies only to the valuation of property itself and does not prescribe standards that have to be applied to comparable-sales analysis. The Court ultimately remanded this case back to the BTA to reconsider whether the BOE's appraiser's adjustments to his leased-fee sales were appropriate and the best indication of the properties' true values in light of their recent decisions in *Steak 'N Shake*, *Rite Aid*, and *Lowe's*. The Court did not make a determination on the second issue, which was whether the subject property was a special purpose property (as the BOE's appraiser defined it to be), because of the doctrine of collateral estoppel. Since the BTA had already determined in the earlier *Lowe's* case that the property was not a special purpose property, the Court did not feel it necessary to relitigate the issue. Finally, the Court determined that the BTA did not adopt a present-use valuation in adopting the BOE's appraisal because it had an entire paragraph in its decision discussing that the present use was a factor, but a noncontrolling factor in determining the value.

Outcome: Vacated and remanded to BTA.

14. *Novita Industries, L.L.C. v. Lorain Cty. Bd. of Revision*, 153 Ohio St.3d 57, 2018-Ohio-2023 (May 30, 2018)

Facts: P/O successfully challenged TY 2009 value of subject property, but case wasn't fully-resolved until 2014. After case was resolved, P/O requested that BOR invoke its continuing-complaint jurisdiction and reduce the value of the property to $750,000 for TYs 2012, 2013 and 2014, but did not explicitly request that jurisdiction be taken over TY 2014 in its submission to the BOR. BOR ruling: Retained Auditor's value because law did not permit carryover. P/O appealed to BTA. P/O presented testimony and appraisal report at BTA. BTA ruling: Adopted appraisal value ($750,000) for TYs 2012 and 2013, but ruled it lacked jurisdiction for TY 2014. P/O and BOE appealed to Supreme Court.

Supreme Court: Rejected BTA's ruling that it didn't lack jurisdiction for TY 2014 because *Life Path Partners* established that a request letter was enough to invoke the BOR's continuing complaint jurisdiction and that nothing in RC § 5715.19(D) authorized the BOR to dismiss such a continuing compliant for lack of jurisdiction. Thus, there was no requirement for P/O to file a "proper" form to assert the BOR's jurisdiction over TY 2014 because any form of written submission was sufficient. Further, there was no limit on the timeliness of the P/O's continuing complaint assertion. The Court did, however, go on to distinguish this case from *Life Path Partners* by pointing out that in that case, the BTA ruled that the continuing complaint was too late whereas in this case, the BTA held that the continuing complaint was too early – the Court held that that did not make a difference. Finally, the Court held that the BOE's claim that the P/O failed to request a specific value was inaccurate as the P/O had attached a copy of the BTA's decision

and, even if it hadn't, by statute, the original complaint "shall continue in effect without further filing".

Outcome: BTA's decision reversed to extent that it refused to exercise jurisdiction for TY 2014. Further, BOR had jurisdiction to determine property's value for TYs 2012-2014.

15. *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-2046 (May 31, 2018)

Facts: Subject property was comprised of two parcels and a 9,600 sf warehouse. Auditor assigned a TY 2011 value of $1,850,000 to property. BOE filed a CAV and presented a deed that was signed and notarized in 2002, but wasn't stamped by the Auditor's office until March 2009. The conveyance fee statement was also from March 2009 and showed that the property had been transferred for $2,313,489. BOE also had been subject of TY 2009 appeal and had been determined to have a value matching the same transfer price. P/O presented an appraisal concluding to a value of $1,470,000. The appraiser also testified that the P/O had told her that the transfer was between related entities and that nonreality items had been included in the transfer. The BOE raised a hearsay objection to this testimony. BOR ruling: adopted P/O's value and held that the March 2009 sale was too remote to be considered "recent" because market conditions had changed too much. BOE appealed. BTA ruling: adopted the $2,313,490 transfer price, holding that P/O failed to rebut presumption that transaction was not arm's-length and that appraiser's testimony about what P/O told her was hearsay. P/O appealed to Supreme Court.

Supreme Court: Court first held that the old version of R.C. § 5713.03 applied ("the auditor *shall* consider the sale price") even though TYs 2011-2013 were also on appeal (neither party requested that the new version come into play for TY 2013). Next, the Court held that even though the P/O had won at the BOR, it still had the burden of demonstrating at the BTA that the transfer price was not the best evidence of market value, and, consequently, that it had failed to meet that burden. Next, it addressed the concept of "recency". First, that through the precedent established in *HIN*, the effective date of a sale in a property tax context, is the date stamped on the conveyance fee statement. Second, that there was no evidence to suggest that the BTA erred in determining that the changed market conditions between the sale date and the tax lien date were not enough to make the sale too remote. Next, the Court held that, while the BTA was not required to do so, it was fully justified in excluding the P/O's appraiser's hearsay testimony. Finally, the Court granted the BOE's motion to strike evidence presented by the P/O in its reply brief because it should have been presented below, but the P/O failed to do so, or provide a reason as to why it was not presented below.

Outcome: Affirmed the BTA's decision and granted the BOE's motion to strike.

16. *Julia Realty, Ltd. v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 262, 2018-Ohio-2415 (June 27, 2018)

Facts: Previously, in a TY 2012 appeal, P/O filed a CAV requesting that BOR reduce value of property from $1,408,700 to $367,500 to reflect the purchase price from an auction. The BOR retained the Auditor's value. After the BTA hearing, but before the decision was issued, the Supreme Court issued a decision (*Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of*

Revision, 141 Ohio St.3d 243), which held that "R.C. § 5713.04 establishes a presumption that a sale price from an auction is not evidence of a property's value", but that the presumption "may be rebutted by evidence showing that the sale occurred at arm's length between typically motivated parties." Because the P/O relied upon sale and did not present any additional evidence, BTA also cited *Olentangy* as precedent and issued a decision retaining the Auditor's value. P/O did not appeal or request a rehearing to present additional evidence to rebut the presumption that sale was not best evidence of market value.

Instead, P/O invoked the BOR's continuing-complaint jurisdiction for TYs 2013 and 2014. At BOR hearing, P/O presented additional evidence demonstrating that the sale was the best evidence of market value. BOE argued that the doctrine of collateral estoppel prevented P/O from presenting additional evidence regarding the auction sale because the issue had already been argued and decided in the TY 2012 case. BOR ruling: retained Auditor's value for TYs 2013 and 2014. P/O appealed to BTA. BTA ruling: held that doctrine of collateral estoppel applied and, thus, P/O was barred from relitigating the arm's-length sale issue on the continuing complaint. P/O appealed to Supreme Court.

Supreme Court: The Court held that the BTA had properly applied the doctrine of collateral estoppel. Interestingly, the Court explained that the P/O had a legitimate gripe that it should be able to present additional evidence demonstrating that the auction sale was the best evidence of market value since the Supreme Court had issued a decision after the TY 2012 BTA hearing (where the P/O relied upon the auction sale). However, the Court held that the P/O should have requested a rehearing or appealed the TY 2012 BTA decision to allow it to present additional evidence that the auction sale was the best evidence of market value. Instead, by invoking continuing-complaint jurisdiction with the BOR for TYs 2013 and 2014, the P/O essentially allowed the BTA's ruling that the auction price was not the best evidence of market value to be finalized and the issue to become estopped on from being relitigated in the TYs 2013 and 2014 hearing.

Outcome: BTA's decision affirmed.

17. *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-2909 (July 25, 2018)

Facts: P/O owned a Kroger located on a uniquely small parcel of land – one that didn't have adequate room for parking. P/O did not own any adjacent parcels for parking, but had the benefit of a parking easement on an adjacent parcel. Auditor valued parcel at $3,000,000 for TY 2014. P/O filed CAV and presented an appraisal report that conducted both sales-comparison and income-capitalization analyses that concluded to a value just under $4,000,000. However, the appraiser then adjusted the value to account for the property's uniquely small size (on average it was 4.102 acres smaller than the average site for a retail property of similar size). The appraiser then prepared a land value analysis and came up with a $380,000 per acre value. He then, multiplied 4.102 acres by $380,000 and rounded to a discount of $1,560,000 and subtracted that form the sales and income approach conclusions. Thus, his value for the subject was reconciled to $2,390,000. BOE presented an abbreviated appraisal report concluding to a value range of $4,900,000 to $5,000,000. BOR ruling: Adopted P/O's value because P/O's appraiser had complete access to property and BOE's did not. BOE appealed to BTA. BTA ruling: Held that

P/O's appraisal report was more probative, but rejected the adjustment because it was an attempt to remove an interest in land from taxation or a "cost-to-cure". P/O appealed to Supreme Court.

Supreme Court: Court held that BTA erred in treating appraiser's adjustment as the removal of the effect of the easement. R.C. § 5713.03 plainly states that property should be valued in fee simple, "as if unencumbered". Here, the P/O's appraiser did exactly what the statute required and made a proper adjustment to account for the differences in parcel size between the Kroger and comparable properties. He still valued the property as if it had access to parking (he was not applying a discount for lack of parking and then making an adjustment for lack of parking) Further, the BTA's cost-to-cure criticism was misguided as the appraiser was not attempting to determine the cost-to-cure the lack of parking, he was making an adjustment to account for the lack of parking.

Outcome: BTA's decision reversed and BOR's decision reinstated.

18. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 146, 2018-Ohio-3254 (August 15, 2018)

Facts: Subject property consisted of 101 low-income housing rental units throughout 24 parcels operating as a single economic unit. P/O received two types of government assistance benefits: federal low-income-housing-tax-credit ("LIHTC") program and Department of Housing and Urban Development's ("HUD's") Housing Assistance Program ("HAP"). LIHTC is a restrictive covenant and HAP is the governmental subsidy that accounts for over 90% of the P/O's rental revenue. Auditor valued property for TY 2011 at $4,417,500. P/O filed a CAV requesting that value be reduced to $2,310,000 and present an appraisal report in support of this valuation.; BOE filed a counter-CAV. BOR ruling: basically adopted P/O's appraisal report, but adjusted the 11.15% capitalization rate to a more realistic (lower) percentage that accounted for the property's low risk investment. BOE filed appeal to BTA and presented its own appraisal, which concluded to a value of $4,265,000. BTA ruling: found the BOE's appraisal report, which took actual rents instead of market rents (received from HAP) into account, to be more probative. P/O appealed.

Supreme Court: Court summarized the main issue as figuring out how best to determine the true value of a low-income-housing property that is both rent restricted (LIHTC) and rent subsidized (HAP). There were two separate approaches towards valuing the property by the appraisers. The P/O's appraiser utilized the income capitalization approach and accounted for the presence of the LIHTC restrictions, but excluded the effect on the rent subsidies. The BOE's appraiser did the opposite – he utilized the income capitalization approach, but relied on the property's actual income and expenses instead of the market rate, and also included the effect of the HAP subsidies.

In *Columbus City Schools*, the Court established 3 general principles for valuing low-income housing: (i) in applying the income approach, using market rents and expenses is better than actual rents; (ii) in applying the income approach, government subsidies shouldn't be taken into account in a way that would increase the property's value; (iii) the cost approach to valuation is not favored. Here, the P/O's appraiser best followed these guidelines and the Court favored its appraisal.

Outcome: Vacated and remanded.

19. *Licking Hts. Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-3255 (August 15, 2018)

Facts: P/O filed a TY 2011 CAV specifically challenging the land value of the property. BOE filed a countercomplaint. For some reason, the BOR hearing was not scheduled until 2014, and, prior to the hearing, the P/O withdrew its CAV after realizing it had been mistaken about the Auditor's distribution of land value. BOE decided to proceed with BOR hearing and request increase. P/O argued that (i) the BOR lacked jurisdiction to hear case once P/O had withdrawn original CAV and (ii) even if BOR had jurisdiction, only the value of the land could be placed at issue. BOR ruling: Disagreed with P/O on (i), but agreed that it could only make a determination on the value of the land, which it determined should be raised to the BOE's appraiser's value for TY 2011 and that the Auditor's determination should be retained for TYS 2012 and 2013. BOE appealed to BTA. BTA ruling: Held that it also had jurisdiction to make a determination on the full value (land and improvements) of the property, and it adopted the BOE's appraiser's full values for TYs 2011, 2012 and 2013. P/O appealed to Supreme Court.

Supreme Court: The Court first determined that the voluntary dismissal of the P/O's CAV filed under R.C. § 5715.19(A) did not retroactively invalidate the BOE's counter-CAV filed under R.C. § 5715.19(B). In fact, since the term "countercomplaint" doesn't appear in the statute, technically, R.C. § 5715.19(A) and § 5715.19(B) both authorize the filing of a complaint. The Court distinguished this case from situations where the original CAV was withdrawn before a counter-CAV was filed and from cases like *C.I.A. Properties* where the original CAV was jurisdictionally invalid and therefore invalidated the counter-CAV. Here, the Court held that since the P/O's original CAV was valid, and that the BOE had filed a jurisdictionally valid complaint in response, the BOE was authorized to advance its own independent objection to the Auditor's original valuation.

The Court also determined that the P/O's argument that the BOR and BTA could only make a determination as to the value of the land only was misguided. R.C. § 5715.19(A)(1)(d) authorizes a complaint to challenge the "total valuation or assessment of any parcel that appears on the tax list."

Outcome: Affirmed BTA's decision to adopt BOE's full parcel valuations for TYs 2011, 2012 and 2013.

Note: The dissent states that the BOR should have dismissed the BOE's complaint once the P/O voluntarily dismissed its CAV because there's no language in the statute that says a complaint filed via R.C. § 5715.19(B) survives the dismissal of the sole complaint that invoked the jurisdiction of the BOR in the first place. In other words, the BOE shouldn't be able to independently advance in this case when it failed to file an original CAV and was only involved in the case because the P/O filed a CAV.

20. *Westerville City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-3855 (September 26, 2018)

Facts: BOE filed a CAV against the property for TY 2013 to increase the Auditor's $35.5M value to $44.5M, which was the value allocated to the property as part of a portfolio sale in November 2013. Property was encumbered by a single tenant lease (JP Morgan Chase). P/O presented appraisal report at BOR concluding to an unencumbered, fee simple value of $24,800,000. BOE objected to appraisal report because P/O had not rebutted presumption that sale price was best evidence of value. BOR ruling: After some procedural issues, BOR adopted the $44.5M sale value. P/O appealed to BTA. BTA ruling: BTA acknowledged that R.C. § 5713.03 had been amended and called for valued of "fee simple estate, as if unencumbered", however, it adhered only to caselaw that applied the earlier version of the statute and adopted the $44.5M sale price. P/O appealed. BOE cross appealed and argued that the earlier version of the statute should apply.

Supreme Court: Court first ruled against the BOE's cross appeal, stating that *Terraza*, which overrode *Berea*, set the precedent that the amended version of R.C. § 5713.03 applies to TY 2013 cases. Thus, taxing authorities needed to consider non-sale-price evidence (especially when there's evidence of encumbrances on the property) in determining the true value of the property. The Court also held that, under the amended R.C. § 5713.03, the pre-Berea principle that "that sale price is the best evidence but not the only evidence of true value" is restored, and thus, the BTA must consider the P/O's appraisal evidence.

Outcome: Vacated and remanded to BTA to consider the P/O's appraisal evidence and "give due consideration to whether the sale price reflects the value of the unencumbered fee-simple estate."

21. *GC Net Lease @ (3) (Westerville) Investors, L.L.C. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 121, 2018-Ohio-3855 (September 26, 2018)

Facts: P/O acquired the subject property in November 2013 for $44,500,000. Property had an anchor tenant, JPMorgan Chase, on a 15-year net lease. Auditor's TY 14 value was $35,000,000. P/O filed a CAV and submitted an appraisal report concluding to a value of $28,500,000. BOE filed a counter-CAV requesting that value be increased to $44,500,000. BOR ruling: noted the appraisal report, but adopted the sale price for Tax Years 2014 and 2015. P/O appealed. BTA ruling: cited *Berea* in rejecting P/O's claim that value should be adjusted because of the lease encumbering the property, found that lease was at or below market rates, and held that because the sale price is the best evidence of value, there was no reason to consider the P/O's appraisal report. P/O appealed.

Supreme Court: Court held that the BTA erred in not giving full consideration to P/O's appraisal evidence. It held that the BTA's finding that the "lease was at, or below, market rents" did not constitute full and proper consideration of the appraisal evidence. Moreover, the Court pointed out that the difference between actual and market rent is only one of the factors that might make an existing lease impact the sale price of a property (other factors might include creditworthiness of a tenant, lease type, etc.). Court stated that "BTA must consider the appraisal evidence alongside the sale price as evidence of the property's value and give due consideration to whether the sale price reflects the value of the unencumbered fee-simple estate."

Outcome: Vacated and remanded to BTA to give full consideration to appraisal evidence.

22. *Molly Co., Ltd. v. Cuyahoga Cty. Bd. of Revision*, 154 Ohio St.3d 137, 2018-Ohio-4070 (October 11, 2018)

*Case involves the application of R.C. § 5715.19(D). Court reversed BTA's and BOR's decision and remanded case back to BOR for a determination of subject property's value. See #3 (*Life Path Partners, Ltd. v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 238, 2018-Ohio-230) above for correct application of law and explanation of issue.

23. *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4244 (October 23, 2018)

Facts: The CEO of the P/O's property management company, who identified himself as the "property manager", filed a decrease CAV on behalf of the P/O. BOE filed a counter-CAV to retain the fiscal officer's value of the property. BOE filed a motion to dismiss because property manager was a non-attorney. P/O opposed the motion by submitting a letter of authorization for the property manager, now described as a "property tax agent", to file on P/O's behalf. BOR ruling: did not rule on the motion to dismiss, considered P/O's appraisal evidence, and ultimately retained the fiscal officer's value. P/O appealed to BTA. BTA ruling: without holding a hearing, the BTA determined that property manager was not authorized under R.C. 5715.19(A) to file a CAV on behalf of P/O and remanded the case back to the BOR to dismiss the CAV. P/O appealed.

Supreme Court: P/O pointed to *Toledo Pub. Schools*, 124 Ohio St.3d 490, 2010-Ohio-253, where the Court explained that the list of persons who could file a CAV on behalf of an entity specified in R.C. §5715.19(A) was not meant to be exhaustive. However, the Court pointed out, a lawyer had prepared the CAV filed by the property owner's management company in *Toledo* – thereby rendering the issue irrelevant. Here, the Court held that since an attorney was not involved in the filing of the CAV, and R.C. § 5715.19(A) does not explicitly reference property managers, the BTA was justified in dismissing the P/O's CAV. The Court also dismissed the P/O's other jurisdictional claims pertaining to the BTA dismissing the case without holding a hearing on the BOE's motion to dismiss.

Outcome: BTA's decision affirmed.

24. *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 268, 2018-Ohio-4282 (October 24, 2018)

Facts: Auditor valued a property with a KeyBank leasing the building at $1,260,000 for TY 2014. P/O filed a decrease CAV for $810,000. BOE filed a counter-CAV seeking to retain Auditor's value. P/O submits an appraisal report valuing property at $625,000. BOR ruling: adopted P/O's appraisal value. BOE appealed to BTA and submitted an appraisal report valuing property at $1,880,000. BTA ruling: adopted BOE's appraisal value. P/O appealed.

Supreme Court: Court explained that in a "battle of appraisals", the "BTA is vested with wide discretion in determining" the weight and credibility afforded to the appraisal reports and that the

Court would not disturb the BTA's decision unless it was unreasonable and unlawful. P/O first claims that BOE's appraisal valued the property in use because it relied heavily on bank branches as comparables rather than other commercial uses and also considered the property to be a special purpose property. The Court rejects the argument that the appraiser invoke the special purpose doctrine and, instead, compared the case to *Johnston Coca-Cola Bottling Co.*, 149 Ohio St.3d 155, 2017-Ohio-870, in that two appraisers arrived at differing opinions of value based on conventional difference in comparables and highest and best use analysis. Next, the P/O asserted that the BOE's appraiser did not value the fee simple as if unencumbered. However, the Court held that the BTA had addressed this issue in its decision, finding that the BOE's appraiser had made adjustments in consideration of the leases in place. The essence of the Court's decision to affirm the BTA's decision was that it did not find any legal fault in the BTA's decision and, therefore, would not disturb its decision by acting as a Super-BTA.

Outcome: Affirmed.

25. *Huber Hts. City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4284 (October 24, 2018)

Facts: The Auditor valued an industrial office, residential duplex and metal pole barn at $1,808,130 in the aggregate for TY 2014. P/O filed a CAV and presented an appraisal report requesting a decrease to $940,000. BOR ruling: reduced the value to $956,630. BOE appealed and had its own appraiser critique the P/O's appraisal report, but not file his own report or proffer his own valuation. BTA ruling: relied on *Bedford* and adopted BOR's decision, but also acknowledged that a BOE was not barred from submitting conflicting evidence in the form of an appraisal review "in a proper case" (by way of *Sears*). BOE appealed.

Supreme Court: The Court first explained the elements of *Bedford*, which are: (i) P/O must file a CAV or counter-CAV; (ii) BOR reduces the Auditor's value; (iii) BOE appeals to BTA; and (iv) the BOR's reduction was based upon appraisal evidence rather than a sale. The Court held that the elements of *Bedford* were met here, and, thus, the BOE could not simply rely on the Auditor's value as a default – the burden was shifted to the BOE to prove a different value. Here, the BOE did not submit an appraisal report concluding to a specific value. Rather, it had an expert witness critique the P/O's appraisal report. The Court also addressed *Sears* and explained that it did not specify what "a proper case" constituted in terms of when an expert review of the P/O's appraisal would be sufficient for evidentiary purposes. However, since *Sears* used conditional language, the Court concluded that an expert review was not appropriate in every case. Further, it was not appropriate in the instant case because *Bedford* already applied and shifted the burden to the BOE to prove a value different from the BOR's value.

Outcome: Affirmed BTA's decision.

26. *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4286 (October 24, 2018)

Facts: Auditor assigned a value of $13,149,000 to subject property for TY 2014. P/O filed a CAV and submitted an appraisal report concluding to a value of $11,200,000. BOE filed a counter-CAV to retain Auditor's value, but also submitted a restricted use appraisal/consulting report from

an appraiser. At the hearing, both parties made reference to a previous hearing involving the same property, same comparables and same appraisers. BOR ruling: adopted P/O's appraisal value. BOE appealed to BTA. BTA ruling: reviewed both appraisal reports and the evidence on the record and came up with its own conclusion of $13,125,447. P/O appealed to Supreme Court.

Supreme Court: Court held that BTA acted in full accordance with its directives set forth in case law by analyzing the evidence presented before it and reaching its own independent valuation. P/O's contention that BOE's appraisal report was unreliable and shouldn't have been considered was shot down as well because the Court found that the BTA had reviewed both reports and used a combination of both to reach its value, and that the P/O hadn't done anything to show clear errors in the BOE's appraisal report. The Court also held that the P/O's argument that *Cannata* barred the BTA from making a proper determination because the record was incomplete was also over-stated. However, in that case, the BOR had rejected the appraisal report, then failed to properly certify the record with the testimony – in other words, the BOR rejected the appraisal, then didn't provide the BTA with an opportunity to review the appraisal testimony. In addition, the BOR had violated an explicit statutory mandate. Neither of those things happened here as the BOR adopted the P/O's appraisal and the BTA had the opportunity to review both appraisal reports on the record. There may have been other off-record evidence considered by the BOR, but its level of importance to the decision didn't the BTA's decision to the same degree as *Cannata.*

Outcome: Affirmed the BTA's decision.

27. *Beavercreek Towne Station, L.L.C. v. Greene Cty. Bd. of Revision*, 154 Ohio St.3d 274, 2018-Ohio-4300 (October 25, 2018)

Facts: The subject property was a retail mall consisting of 5 parcels, including a parcel leased to a Lowe's and a parcel leased to a Kohl's. The Auditor assigned an aggregate value of $22,233,850 to the property for TY 2014, with $5,606,900 to the Lowe's parcel and $6,197,150 to the Kohl's parcel. In October 2014, the property was sold as part of a larger portfolio sale and the conveyance fee statement allocated a total of $47,479,830 to the five parcels. The BOE filed a CAV to raise the value to the sale price. BOR ruling: adopted the sale price. P/O and Kohl's filed an appeal to BTA; P/O and Lowe's also filed an appeal to BTA. P/O and Kohl's presented appraisal reports of the Lowe's, Kohl's, and the other three parcels. The report concluded to values of $7,300,000 for Lowe's, $5,930,000 for Kohl's and $22,075,000 for the other three parcels, equaling $35,305,000 in the aggregate. The BOE filed a motion to exclude the appraisal reports and testimony from the P/O and Kohl's appraiser because Kohl's was a tenant and did not have standing or authorization to appear on behalf of the P/O. BTA ruling: granted the BOE's motion to exclude and redacted all information related to the Kohl's appraisal reports, and adopted the sale price. P/O (both Kohl's and Lowe's) appealed.

Supreme Court: The Court held that, while the BTA was correct in ruling that the tenant (Kohl's) did not have independent standing as a party to the appeal, striking all of the appraisal evidence presented by Kohl's was an incorrect application of the law. For one, Kohl's was represented by an attorney who was representing both the P/O and Kohl's. For two, Kohl's had authority to act as an agent for the P/O by virtue of the same attorney signing the Notice of Appeal from the BOR's decision on behalf of both parties. Even though filing method was unusual, the appraisal evidence had been presented on behalf of the P/O. Therefore, the BTA was wrong to exclude it from the

record and consideration. Thus, the Court vacated and remanded the case back to the BTA to consider all of the evidence on record.

Outcome: Vacated and remanded to BTA to consider all evidence on record.

28. ***Store Master Funding VI, L.L.C. v. Franklin Cty. Bd. of Revision*****,**
Slip Opinion No. 2018-Ohio-4301 (October 25, 2018)
29. ***Northland-4, L.L.C. v. Franklin Cty. Bd. of Revision*****,**
Slip Opinion No. 2018-Ohio-4303 (October 25, 2018)
30. ***MK Menlo Property Owner, L.L.C. v. Summit Cty. Bd. of Revision,***
Slip Opinion No. 2018-Ohio-4304 (October 25, 2018)
31. ***Menlo Realty Income Properties 28, L.L.C. v. Franklin Cty. Bd. of Revision*****,**
Slip Opinion No. 2018-Ohio-4305 (October 25, 2018)
32. ***Icon Owner Pool 3 Midwest/Southeast, L.L.C. v. Franklin Cty. Bd. of Revision*****,**
Slip Opinion No. 2018-Ohio-4306 (October 25, 2018)
33. ***Icon Owner Pool 3 Midwest/Southeast, L.L.C. v. Franklin Cty. Bd. of Revision*****,**
Slip Opinion No. 2018-Ohio-4307 (October 25, 2018)

*In all of above cases, the Supreme Court vacated and remanded the cases back to the BTA on the authority of *Terraza* because the BTA failed to consider the property owner's appraisal evidence.

34. ***Spirit Master Funding IX, L.L.C. v. Cuyahoga Cty. Bd. of Revision*****,**
Slip Opinion No. 2018-Ohio-4302 (October 25, 2018)

Facts: Property was a Red Lobster restaurant that was sold twice within a short period of time – sold in August 2014 for $2,925,880 and sold again in December 2014 for $3,439,029. BOE filed a TY 2014 CAV requesting that value be set at latter sale price, but acknowledged that if the August sale was an arm's-length sale, it would better reflect the value as of the tax lien date. P/O presented an appraisal report concluding to value of $1,535,000 and explained that August sale price was a part of a $2.1B Red Lobster restaurant chain sale and that the $2,925,880. BOR ruling: Set value at $2,925,900 based upon August sale. P/O appealed to BTA. BTA ruling: Declined to consider appraisal and relied on *Berea* to reject the P/O's notion that the "changes to the language of R.C. § 5713.03 grant discretion to board to determine whether to adopt sales to determine the value of real property." P/O appealed.

Supreme Court: Held that even though parties did not dispute the arm's-length nature of the August sale, the BTA must still consider the appraisal evidence presented by P/O. Further, the changes to the statute made the sales price created a presumption, but other evidence could overcome that presumption.

Outcome: Vacated and remanded decision back to BTA to weight and address the evidence presented, specifically, the P/O's appraisal report.

35. *Harrah's Ohio Acquisition Co., L.L.C. v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4370 (October 30, 2018)

Facts: This was the 3rd appeal involving the Thistledown "racino" in Cuyahoga County. In the TY 2010 case, the Court rejected the BOE's claim that the value should be $43M that was paid for the property at an auction because the sale was a forced-sale and included non-real estate items. The Court assigned a $13.8M value to the property. In the TY 2012 case, the Court again rejected the BOE's contention that it should adopt the sale price. This time, it adopted the BTA's appraisal-based valuation of $16.3M. In the present case (TY 13), both parties presented their own appraisal evidence. The P/O's appraisal valued the property at $22M. The BOE's valued the property at 44.5M. BTA ruling: didn't consider the BOE's appraisal because it determined it analyzed the "leased-fee" value. The BTA adopted the P/O's appraisal value of $22M. BOE appealed to Supreme Court.

Supreme Court: The BOE made a number of assertions about the P/O's appraisal report. First, it analogized the appraiser making 50-60% downward adjustments to his sales comparables to account for the video-lottery (VLT) license to an appraiser allocating goodwill. However, the Court distinguished this from the case cited by the BOE because the appraiser in the BOE's case allocated $500,000 to "goodwill" generally, not specifically to the hotel franchise. Here, the opportunity to acquire a VLT license is a separate, intangible asset. The Court noted that it did not necessarily agree with the P/O's appraiser's view, but that the BTA had reasonably and lawfully relied on his appraisal. Next, the BOE analogized the P/O's appraiser's $50M deduction for the VLT license to zoning laws. The Court distinguishes a license (to engage in otherwise unlawful conduct) from zoning (which restricts land use). It also points out that a license can't be transferred with property; ergo it is not part of real property. The Court then turned to the BTA's refusal to consider the BOE's appraisal. The Court held that this was a legal error because it had previously held in *Meijer Stores* that an appraiser may appraise an owner-occupied property as if it were leased. This legal error, along with the BTA not addressing the P/O's contentions that the appraiser was not a qualified expert and that his testimony was too speculative, were all determined to be cause for remanding the case back to the BTA.

Outcome: Vacated and remanded to BTA to fully consider an address the evidence.

36. *Johnson v. Clark Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4390 (November 1, 2018)

Facts: P/O files a CAV challenging the Auditor's determination of his property's Current Agricultural Use Valuation ("CAUV"). Property operated as a farm on 150+ acres of land. Auditor set the true market value at $726,350 and the CAUV value at $457,250. P/O filed a CAV and elicited the testimony of a few County officials and presented some exhibits, photographs, and a written statement to the BOE. BOR ruling: rejected the P/O's claims. P/O appealed to BTA. BTA ruling: found that (i) the Auditor complied with his duties to record his basis for the valuation; (ii) P/O failed to provide the specific boundaries of the portions of his property that he felt were being overvalued; and (iii) seems to have misunderstood the purpose and implementation of the CAUV program – believing that the value of the property should be based solely upon the property's ability to grow crops. P/O appealed to Supreme Court.

Supreme Court: Court outlined the CAUV statute and discussed how it is a preferred tax status because it's generally a lower value than true market value. The Court then reviewed all five of the P/O's claims. First, it held that the BTA correctly applied the burden of proof, which was on the P/O to demonstrate that the proposed market value of the property was incorrect. Next, the Court held that the BTA had not improperly applied a presumption of validity to the BOR's decision, as the BTA analyzed and rejected the P/O's evidence. Next, the Court agreed with the P/O that his opinion of value was competent evidence, but noted that it was not a requirement for the BTA to accept the property owner's opinion of value. Here, the BTA did consider and accept the P/O's opinion of value into evidence, but ultimately did not agree with the P/O. Next, the Court dismissed a baseless claim by P/O that Auditor violated his duties in determining the property's TY 2013 value. Finally, the Court held that the BTA reasonably determined that the P/O failed to show the boundaries of the portions of his property that he felt were at issue. P/O seemed to confuse "boundaries" with "acres" in that he was not able to point to the exact boundaries of the property that he felt the auditor was valuing inappropriately.

Outcome: Affirmed BTA's decision.

37. *Kohl's Illinois, Inc. v. Marion Cty. Bd. of Revision*, 154 Ohio St.3d 281, 2018-Ohio-4461 (November 6, 2018)

Facts: This case relates to an earlier case involving the same subject property, *Kohl's I*, and involves a covenant, which was part of a TIF agreement and stated that the P/O wasn't allowed to file a counter-CAV against an increase-CAV during the effective years of the TIF agreement. In that case, the Court held that the covenant was not a jurisdictional bar, but could be a valid defense against the P/O filing a counter-CAV. The Court remanded the case to the BTA to allow the beneficiaries of the covenant (County and BOE) the chance to "establish the binding validity of the covenant as a defense against the complaint." On remand, the BTA consolidated the hearings for the TY 2010 case with the pending TY 2013 case, and determined that no sufficient argument enforcing the covenant had been advanced by the County or BOE. Therefore, it remanded the TY 2010 case to the BOR to determine the value and adopted the appraisal valuation by the P/O in the TY 2013 case. None of the parties appealed. On remand of the TY 2010 case, the P/O introduced an appraisal report concluding to $3,925,000 for TY 2010. BOR ruling: retained the Auditor's $5,090,370 valuation. P/O appealed to BTA. BTA ruling: adopted the P/O's appraisal valuation. BOE and County appealed.

Supreme Court: BOE and County appellees contended that the covenant issue was somehow different from the issue addressed in the BTA's decision to remand the TY 2010 case to the BOR and implement the P/O's TY 2013 value. Both claim that the BTA did not decide whether the covenant was enforceable by pointing to a line in the decision, "Since the county appellees have failed to provide this board with any pertinent legal authority, we are unable to make a determination as to whether the no-contest covenant is binding and enforceable upon Kohl's." However, when read in context of the rest of the paragraph, the BTA clearly made a finding that the BOE and County had failed to prove that the covenant was enforceable. Thus, the issue was litigated and decided and, subsequently, not appealed by the BOE or County. Therefore, the Court held that it was estopped from addressing the issue again.

Outcome: BTA's decision was affirmed.

**38. *Ross v. Cuyahoga Cty. Bd. of Revision*,
Slip Opinion No. 2018-Ohio-4746 (November 29, 2018)**

Facts: This case falls entirely upon a procedural issue – thus, the facts are irrelevant. P/O filed a CAV challenging the fiscal officer's TY 15 value. BOR ruling: retained fiscal officer's value. P/O filed a Notice of Appeal with the BTA and had their attorney submit a written comment at a public BOR meeting, complaining that the Cuyahoga County BOR ignored Supreme Court precedent, ignored the P/O's appraisal, ignored common sense, and undermines public confidence in competence and integrity of BOR. 34 days after the BOR's decision, the P/O filed a copy of its Notice of Appeal to the BTA with the BOR. County appellees filed a motion to dismiss for P/O's failure to timely file its Notice of Appeal to the BTA with the BOR. BTA ruling: dismissed P/O's appeal. P/O appealed to Supreme Court.

Supreme Court: Because this case involved an application of the law to undisputed facts, the Court reviewed the matter *de novo*. The Court held that, in order to perfect an appeal of a BOR's decision to the BTA, a notice of appeal must be timely filed with *both* the BTA and BOR (R.C. § 5717.01), and that failure to comply with the statute was fatal to the appeal. Further, it held that the P/O's written/verbal complaint at the public meeting did not constitute a physical filing of a notice of appeal, and, even if it had, the written complaint at the meeting did not properly apprise the opposing parties of the notice of appeal filing. Finally, even though the automated BTA docketing letter was sent to all parties, "Appellants may not substitute the BTA's voluntary deeds for their required acts."

Outcome: Affirmed.

**39. *HCP EMOH, L.L.C. v. Washington Cty. Bd. of Revision*,
Slip Opinion No. 2018-Ohio-4750 (November 30, 2018)**

Facts: A one-story assisted-living facility with 89 units was valued by the Auditor at $6,042,620 for TY 2014. P/O filed a CAV at presented a memo and some appraisal analysis (not a formal report) at the BOR, requesting a decrease to $2,900,000. BOR ruling: retained Auditor's value. P/O appealed to BTA, and presented an appraisal report that concluded to a valuation of $3,550,000. The County appellees also filed an appraisal report, which concluded to a valuation of $9,100,000. BTA ruling: BTA rejected the P/O's appraisal, which had used apartments comparables and adopted the County appellees' appraisal, which utilized the net leases to calculate a lease-coverage ratio. P/O appealed to Supreme Court.

Supreme Court: The main issues the Court decided were (i) whether an appraiser needed to rely on apartment comparables when valuing assisted-living facilities? (ii) whether the County's appraiser's lease-coverage ratio methodology was a proper method for determining market value? and (iii) whether the BTA erred in rejecting the P/O's appraisal and adopting the County's appraisal? First, the Court pointed out that the case law the P/O points to in its assertion that appraisers are required to rely on apartment comparables when valuing assisted-living facilities is factually incorrect. The Court previously held that "an appraiser *may* rely on apartment comparables when valuing an assisted-living facility" (*Health Care REIT*, 140 Ohio St.3d 30). Second, the Court held that the County's appraiser's methodology reflected the business value rather than the realty value. For example, if 2 hypothetical stores were identical in every aspect

except their sales volume, the County's appraisal methodology would value the store with the higher sales as having a higher realty value – which is improper. Therefore, the Court held that the BTA erred in adopting the County's appraisal. Lastly, the Court held that although the BTA erred in adopting the County's appraisal, it did not err in rejecting the P/O's appraisal, and that the case would be remanded to the BTA to independently evaluate and come up with their own value if there was enough evidence.

Outcome: Vacated and remanded.

40. *Yanega v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-5208 (December 27, 2018)

Facts: P/O filed CAV challenging TY 2015 value of property. Property had also been subject of a TY 2014 tax appeal where BOR reduced value from $78,200 to $48,000. TY 2015 was an update year in Cuyahoga County and Fiscal Officer valued property at $70,400, a value that reflected a 10% reduction from the TY 2014 value. P/O requested that BOR reduce value to either $48,000 (from previous BOR decision) or $15,000 (value of sale from 2013). BOR ruling: Reduced value to $66,000. P/O appealed to BTA. Both parties waived their appearance at hearing. P/O filed a brief asking for an additional 10% downward adjustment of the $48,000 value it had requested to mirror the County's 10% reduction on the TY 2015 update. BTA ruling: Adopted P/O's arguments and valued property at $43,210. BTA presumably found that continuing-complaint jurisdiction had applied because TY 2014 case had not been decided until after TY 2015 values had been set. BTA also denied County's motion for reconsideration on 10% reduction. County appealed to Supreme Court.

Supreme Court: County raised three errors on appeal relating to BTA adopting 10% reduction. On its final replay brief, it raised the argument that the BTA erred in applying the continuing complaint jurisdiction (R.C. § 5715.19(D)) because P/O had filed a fresh CAV for TY 2015. The Court held that, while this final error raised by the County has merit, the error was not raised in the Notice of Appeal to the Supreme Court, and thus, the Supreme Court did not have jurisdiction to consider it. As for the 10% reduction, the Court agreed with the County that the BTA improperly adopted the 10% reduction without the P/O presenting any evidence that there'd been a uniform 10% reduction across all the properties in Cuyahoga County. It also distinguished this case from the *Inner City* case that the BTA cited in adopting the 10% reduction.

Outcome: Affirmed in part and reversed in part → ordered that value be modified to $48,000.