

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

OLENTANGY LOCAL SCHOOLS
BOARD OF EDUCATION

Appellant-Appellee

-vs-

DELAWARE COUNTY BOARD OF
REVISION, ET AL.

Appellee-Appellant

: JUDGES:

:
: Hon. William B. Hoffman, P.J.
: Hon. Sheila G. Farmer, J.
: Hon. Patricia A. Delaney, J.

:
: Case No. 14 CAH 10 0070

:
: O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Board of Tax Appeals,
Case No. 2013-2739

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

May 29, 2015

APPEARANCES:

For Appellant:

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For Appellee:

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Delaney, J.

{¶1} Appellant Store Master Funding II, LLC appeals the September 19, 2014 Decision and Order of the Ohio Board of Tax Appeals. Appellee is the Olentangy Local Schools Board of Education.

FACTS AND PROCEDURAL HISTORY

{¶2} On February 18, 2013, Appellee Olentangy Local Schools Board of Education ("Olentangy BOE") filed an original complaint against valuation with the Delaware County Board of Revision upon certain real property owned by Appellant Store Master Funding II, LLC ("Store Master"). Olentangy BOE sought to increase the Delaware County Auditor's original valuation of the property at \$1,535,400 to \$2,689,642.95 for the tax year 2012.

{¶3} The Delaware County Board of Revision ("BOR") held a hearing on the complaint on June 19, 2013. Olentangy BOE presented evidence that on December 14, 2012, Childcare Holdings of Ohio, L.L.C. transferred real property located at 2989 North Hampton Drive in Powell, Delaware County, Ohio ("Powell Property") to Store Master. The Real Property Conveyance Fee Statement of Value and Receipt showed the consideration paid by Store Master for the Powell Property was \$2,689,642.95.

{¶4} Store Master presented evidence at the BOR hearing that alleged the sale was a sale-leaseback transaction. Store Master provided an independent appraisal of the Powell Property, which valued the Powell Property at \$1,600,000.00. Store Master argued that because the transaction was a sale-leaseback transaction, the reported sale price overstated the value of the Powell Property for purposes of real estate taxation.

{¶5} On June 27, 2013, the BOR found the valuation of the real property for tax year 2012 was \$1,600,000.00. Olentangy BOE appealed the decision to the Ohio Board of Tax Appeals ("BTA").

{¶6} A hearing was held before the BTA on January 14, 2014. At the hearing, Store Master presented evidence from Martin L. Brill. Brill is the former partial owner of the Powell Property and the current president of Compass School. (T. 8) Brill testified the Powell Property has operated as a preschool since 1998. (T. 15) Compass School operated the school located at the property. (T. 11) The owner of the Powell Property was Childcare Holdings of Ohio, L.L.C. (T. 9) Compass School leased the Powell Property from Childcare Holdings of Ohio, L.L.C. (T. 12) Brill testified the owners of Childcare Holdings of Ohio, L.L.C. were the same owners of Compass School. (T. 8-10)

{¶7} In May 2012, Brill testified Childcare Holdings decided to sell three of its properties. The three properties for sale were the Powell Property, 9370 Waterstone Boulevard in Cincinnati, Ohio, and 9811 Godwin Drive in Manassas, Virginia. (Store Master Exhibits) The owners hired a broker from Lake Forest Capital. (T. 17) The broker marketed the properties nationally. (T. 17) Childcare Holdings referred Lake Forest Capital to Store Master, an investor group, as a possible buyer. (T. 17) Brill testified he did not have an ownership interest nor had he ever had an ownership interest in Store Master. (T. 17-18)

{¶8} Store Master and Compass School entered into a sale-leaseback agreement. The Powell Property, Cincinnati property, and Manassas property were sold to Store Master. (Exhibit 2, Purchase and Sale Agreement) Store Master and Compass School agreed to a 15-year lease agreement where Compass School would lease the

Powell Property from Store Master. (T. 12; Exhibit 1, Master Lease Agreement) Store Master and Compass School agreed to maintain the same lease rate that Compass School had with Childcare Holdings. (T. 12) Compass School and Childcare Holdings did not look to the market to initially set the lease rate, but set the lease rate for internal purposes because Compass School and Childcare Holdings were related companies. (T. 13)

{¶9} Brill testified the parties first negotiated the capitalization rate to calculate the sales price. (T. 10-11) The parties arrived at a capitalization rate at 8.5% for all three properties. (T. 11, 19) The parties used the existing lease rate for each property and then capped that separately, rather than arriving at an overall allocation and then separating it. (T. 19) The Conveyance Fee Statement stated the parties sold the Powell Property for \$2,689,642.95. Brill testified the allocation for the Powell Property was determined by dividing the lease rate for the Powell Property with the 8.5% capitalization rate. (T. 19)

{¶10} Store Master also presented the testimony of Aaron C. Wright, a licensed appraiser. Wright prepared an appraisal report effective January 1, 2012. (T. 23) The appraised value of the Powell Property was \$1,600,000.00. (T. 37)

{¶11} The BTA issued its Decision and Order on September 19, 2014. The BTA acknowledged the transaction was a sale-leaseback transaction, but found Store Master did not offer sufficient evidence to rebut the purchase price listed on the Conveyance Fee Statement. It found the Powell Property's true and taxable values, as of January 1, 2012, were \$2,689,640 and \$941,370, respectively.

{¶12} It is from this Decision that Store Master now appeals.

ASSIGNMENTS OF ERROR

{¶13} Store Master raises six Assignments of Error:

{¶14} "I. THE DECISION OF THE BOARD OF TAX APPEALS IS UNREASONABLE, ERRONEOUS, UNLAWFUL FOR THE REASON THAT THE DECISION IS CONTRARY TO THE WEIGHT OF THE EVIDENCE PRESENTED TO THE BOARD OF TAX APPEALS.

{¶15} "II. THE DECISION OF THE BOARD OF TAX APPEALS IS UNREASONABLE, ERRONEOUS, UNLAWFUL AND CONTRARY TO THE LAW FOR THE REASON THAT THE BOARD OF TAX APPEALS IMPROPERLY FAILED TO CONSIDER ALL OF THE EVIDENCE PRESENTED.

{¶16} "III. THE BOARD OF TAX APPEALS ABUSED ITS DISCRETION AND ACTED UNREASONABLY, UNLAWFULLY AND ARBITRARILY IN DETERMINING THE VALUE OF THE SUBJECT PROPERTY BY DISREGARDING THE APPRAISAL EVIDENCE OF THE TAXPAYER/APPELLANT HEREIN.

{¶17} "IV. THE BOARD OF TAX APPEALS ABUSED ITS DISCRETION AND ACTED UNREASONABLY, UNLAWFULLY AND ARBITRARILY IN IGNORING THE CHANGE IN THE OHIO REVISED CODE 5713.03 CONCERNING HOW REAL ESTATE SHALL BE VALUED, WHICH WAS EFFECTIVE BEFORE THE SALE/LEASEBACK TRANSACTION TOOK PLACE.

{¶18} "V. THE BOARD OF TAX APPEALS ABUSED ITS DISCRETION AND ACTED UNREASONABLY, UNLAWFULLY AND ARBITRARILY BY APPLYING OUTDATED CASE LAW AND LEGAL STANDARDS TO THE DECEMBER 1012 [SIC] SALE, THOSE STANDARDS BEING EFFECTIVELY CHANGED BY THE CHANGED [SIC] BY THE LEGISLATURE'S CHANGE TO OHIO REVISED CODE 5713.03 BY THE

129TH GENERAL ASSEMBLY, H.B. 487, SECTION 101.01, SIGNED INTO LAW JUNE 11, 2012 AND EFFECTIVE SEPT. 10, 2012.

{¶19} "VI. THE BOARD OF TAX APPEALS ABUSED ITS DISCRETION AND ACTED UNREASONABLY, UNLAWFULLY AND ARBITRARILY BY IGNORING THE BOARD OF REVISION'S REVIEW OF THE EVIDENCE IN THIS MATTER, INCLUDING A FULL REVIEW OF THE FACTS AND CIRCUMSTANCES SURROUNDING THE SALE/LEASEBACK TRANSACTION COMBINED WITH THE CHANGE IN OHIO LAW, EFFECTIVE PRIOR TO THE SALE/LEASEBACK, AND IT'S [SIC] CONCLUSION AS EVIDENCED BY IT'S [SIC] DECISION THAT THE EVIDENCE SUBMITTED BY THE TAXPAYER WAS THE BEST EVIDENCE AND MOST APPROPRIATE EVIDENCE OF VALUE CONCERNING THIS PROPERTY AS OF THE TAX LIEN DATE."

ANALYSIS

Compliance with the Appellate Rules

{¶20} We first note the appellate brief of Store Master does not comply with App.R. 16(A)(7). The appellate rule states:

The appellant shall include in its brief, under the headings and in the order indicated, all of the following: * * * *[a]n argument containing the contention of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions*, with citations to the authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary. (Emphasis added.)

{¶21} Store Master recites six assignments of error in its statement of the assignments of error presented for review. In its argument, however, Store Master does

not comply with App.R. 16(A)(7) because it does not present an argument containing its contentions with respect to each assignment of error presented for review. It makes a general argument without separately analyzing any of the six raised assignments of error. An appellate court may rely upon App.R. 12(A) in overruling or disregarding an assignment of error because of “the lack of briefing” on the assignment of error. *Oyler v. Oyler*, 5th Dist. Stark No. 2014CA00015, 2014-Ohio-3468, ¶ 40 citing *Hawley v. Ritley*, 35 Ohio St.3d 157, 159, 519 N.E.2d 390, 392-393 (1988).

{¶22} In the interests of justice, we will consider Store Master's arguments. We reviewed the assignments of error and find that Store Master Funding raises similar arguments in the six assignments of error. For ease of discussion, we combine assignments of error one, two, three, and six because they relate to the consideration of the evidence by the BTA. We combine assignments of error four and five because they argue the BTA applied the incorrect version of the applicable law.

Standard of Review

{¶23} Store Master appeals the decision and order of the BTA pursuant to R.C. 5717.04. The statute reads, “[t]he proceeding to obtain a reversal, vacation, or modification of a decision of the board of tax appeals shall be by appeal to the supreme court or the court of appeals for the county in which the property taxed is situate or in which the taxpayer resides.”

{¶24} The issue before this court is whether the BTA acted reasonably and lawfully when it adopted the entire 2012 sale price, \$2,689,640, as the value of the Powell Property. Store Master argues because it was a sale-leaseback transaction, the conveyance fee statement reporting \$2,689,640 as the consideration for the real

property was not the value of the Powell Property. Store Master argues the appraisal of the real property demonstrates the value of the property on January 1, 2012 was \$1,600,000. Store Master also contends the BTA erred when it applied the incorrect version of R.C. 5713.03. In *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 93-94, 2014-Ohio-1588, 9 N.E.3d 1004, 1006, the Ohio Supreme Court recited the standard of review for an appeal of a BTA decision:

The true value of property is a “question of fact, the determination of which is primarily within the province of the taxing authorities,” and accordingly, we “will not disturb a decision of the Board of Tax Appeals with respect to such valuation unless it affirmatively appears from the record that such decision is unreasonable or unlawful.” *Cuyahoga Cty. Bd. of Revision v. Fodor*, 15 Ohio St.2d 52, 239 N.E.2d 25 (1968), syllabus.

{¶25} The Ohio Supreme Court has also stated:

* * * although the BTA is responsible for determining factual issues, we “‘will not hesitate to reverse a BTA decision that is based on an incorrect legal conclusion.’ ” *Satullo v. Wilkins*, 111 Ohio St.3d 399, 2006-Ohio-5856, 856 N.E.2d 954, ¶ 14, quoting *Gahanna–Jefferson Local School Dist. Bd. of Edn. v. Zaino*, 93 Ohio St.3d 231, 232, 754 N.E.2d 789 (2001). Pursuant to R.C. 5717.04, the statute that creates the remedy of appeal to this court from decisions of the BTA, we may either reverse a decision of the BTA or modify it if we find that the decision is unreasonable or unlawful.

Sapina v. Cuyahoga Cty. Bd. of Revision, 136 Ohio St.3d 188, 191-92, 2013-Ohio-3028, 992 N.E.2d 1117, 1121, ¶ 15 (2013).

{¶26} Under these standards, we review Store Master's appeal of the BTA decision.

IV. and V. The Applicable Law

{¶27} Store Master argues the BTA decision reached an incorrect conclusion of law because it based its decision as to property value on case law analyzing an outdated version of R.C. 5713.03. We disagree.

{¶28} R.C. 5713.03 governs the auditor's determination of the property's value. The version of R.C. 5713.03 in effect until September 9, 2012 was Am.Sub.H.B. No. 260, 140 Ohio Laws, Part II, 2665, 2772. Former R.C. 5713.03 provides:

The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of each separate tract, lot, or parcel of real property and or buildings, structure, and improvements located thereon and the current agricultural use value of land valued for tax purposes in accordance with section 5713.31 of the Revised Code, in every district, according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with the uniform rules and methods of valuing and assessing real property as adopted, prescribed, and promulgated by the tax commissioner. * * * In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable

length of time, either before or after the tax lien date, the auditor *shall* consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. * * *

(Emphasis added.)

{¶29} The Ohio Supreme Court interpreted the H.B. 260 version of R.C. 5713.03 as a legislative mandate that a recent arm's length sale price was to be used by the auditor as the criterion of the property's value unless the opponent of using the sale price could mount a successful challenge to the arm's-length character or the recency of the sale. *Sapina v. Cuyahoga Cty. Bd. Of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, 992 N.E.2d 1117, ¶ 20 citing *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. Of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, 885 N.E.2d 222, ¶ 13 citing *Berea City School Dist. Bd. Of Edn. V. Cuyahoga Cty. Bd. Of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, 834 N.E.2d 782. The mandate entailed a rejection of appraisal evidence of the value of the property whenever a recent arm's-length sale price was offered as evidence of value. *Id.*

{¶30} R.C. 5713.03 was amended in Am.Sub.H.B. 487. H.B. 487 was signed on June 11, 2012 and effective on September 10, 2012. The revised statute stated:

The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value *of the fee simple estate, as if unencumbered*, of each separate tract, lot, or parcel of real property and or buildings, structure, and improvements located thereon and the current agricultural use value of land valued for tax purposes in accordance with section 5713.31 of the Revised Code, in every district,

according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with the uniform rules and methods of valuing and assessing real property as adopted, prescribed, and promulgated by the tax commissioner. * * * 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 *may* consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. * * *

(Emphasis added.)

{¶31} The General Assembly amended R.C. 5713.03 to state that the auditor “may” use the arm's-length sale price to determine the property's value, rather than stating the auditor “shall” do so. *Sapina*, 2013-Ohio-3028, ¶ 20, fn. 1. The amendment provides the auditor with discretion to use a recent arm's-length sale price as a criterion for a property's value.

{¶32} Store Masters argues the court should apply the H.B. 487 version of R.C. 5713.03, effective September 10, 2012, because the valuation of the Powell Property is for tax year 2012. The Ohio Supreme Court has held that the court must apply the substantive tax law in effect during the tax year at issue. *Id.*

{¶33} Olentangy BOE argues that while the effective date of H.B. 487 is September 10, 2012, H.B. 487 provides for a different effective date for amended R.C. 5713.03. Uncodified Section 757.51 of H.B. 487 states, “[t]he amendment by this act of

section 5713.03 of the Revised Code applies to the first tax year, after tax year 2012, to which division (A) or (B) of section 5715.24 of the Revised Code applies in the county.”

{¶34} R.C. 5715.24 is entitled, “Review of assessment by tax commissioner; change of aggregate value.” R.C. 5715.24 refers to the schedule in which a reappraisal is conducted by a county every six years, with an update of valuation performed in the third year; the interim period, sometimes referred to as a “triennium” or “triennial period,” consists of a reappraisal year or an update year plus the two following years. *Soyko Kulchystsky, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 141 Ohio St.3d 43, 46, 2014-Ohio-4511, 21 N.E.3d 297, 300, ¶ 20. R.C. 5715.24 “requires that the BTA shall determine whether the real property and various classes thereof have been assessed by an equal and uniform rule at taxable value and, if necessary, revise the valuation; and orders of the board of tax appeals may be enforced by proceedings in mandamus, injunction, or other appropriate proceeding under RC 5703.39. *State ex rel. Bd. of Tax Appeals v. Smith* (Ohio 1974) 39 Ohio St.2d 155, 314 N.E.2d 165.” R.C. 5715.24, Notes of Decisions.

{¶35} The Powell Property is located in Delaware County. Olentangy BOE states that amended R.C. 5713.03, pursuant to uncodified section 757.51, was not effective until the Delaware County Auditor conducted the sexennial reappraisal or triennial update after tax year 2012. Olentangy BOE states the Delaware County Auditor conducted its sexennial update in tax year 2011 and the triennial update following tax year 2012 was not until tax year 2014. Olentangy BOE argues that pursuant to uncodified section 757.51 of H.B. 487, the amended version of R.C. 5713.03 was not

effective until tax year 2014. Store Master did not file an appellate reply brief to rebut this argument.

{¶36} To clarify R.C. 5713.03 (or to add confusion), the General Assembly again amended R.C. 5713.03 in H.B. 510. H.B. 510 was signed on December 26, 2012 and was effective on March 27, 2013. R.C. 5713.03, amended by H.B. 510, states:

The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the fee simple estate, as if unencumbered *but subject to any effects from the exercise of police powers or from other governmental actions*, of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon and the current agricultural use value of land valued for tax purposes in accordance with section 5713.31 of the Revised Code, in every district, according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with the uniform rules and methods of valuing and assessing real property as adopted, prescribed, and promulgated by the tax commissioner. The auditor shall determine the taxable value of all real property by reducing its true or current agricultural use value by the percentage ordered by the commissioner. 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 *may* consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes.

(Emphasis added.)

{¶37} Uncodified section 3 of H.B. 510 repealed uncodified section 757.51 of H.B. 487. The effective date of R.C. 5713.03, as amended by H.B. 510, was March 27, 2013.

{¶38} In summary, the valuation of the Powell Property is for tax year 2012. The H.B. 260 version of R.C. 5713.03 was effective to September 9, 2012. H.B. 487, effective September 10, 2012, amended R.C. 5713.03; however, uncodified section 757.51 set a different effective date for R.C. 5713.03 based on R.C. 5715.24. The unrebutted argument of Olentangy BOE is that the effective date of R.C. 5713.03, as amended by H.B. 487, was tax year 2014. H.B. 510, effective March 27, 2013, amended R.C. 5713.03 again and repealed uncodified section 757.51.

{¶39} Based on our review of the effective dates of the different versions of R.C. 5713.03, we find the H.B. 260 version of R.C. 5713.03 is applicable to the present case. The BTA was correct in its reliance on case law analyzing the H.B. 260 version of R.C. 5713.03.

I., II., III., and VI. The Valuation of the Powell Property

{¶40} Store Master contends the BTA acted unreasonably and unlawfully when it adopted the entire 2012 sale price, \$2,689,640, as the value of the Powell Property.

{¶41} In this case, the H.B. 260 version of R.C. 5713.03 and related case law guides our analysis. The statute reads:

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

{¶42} Pursuant to the H.B. 260 version of R.C. 5713.03, the auditor is legislatively mandated to use a recent arm's-length sale price as the criterion for a property's value. *Sapina*, 2013-Ohio-3028 at ¶ 20; *HIN, L.L.C. v. Cuyahoga Cty. Bd. Of Revision*, 138 Ohio St.3d 223, 2014-Ohio-523, 923 N.E.2d 1144, ¶ 12. Store Master does not dispute the December 2012 sale was recent and at arm's-length. Store Master contends that because it was a sale-leaseback transaction, the conveyance fee statement reporting \$2,689,640 as the consideration for the real property was not the value of the Powell Property. Store Master argues the appraisal of the real property demonstrates the value of the property on January 1, 2012 was \$1,600,000.

{¶43} Olentangy BOE argues the issues presented in this case are directly on point with those presented in *HIN, L.L.C. v. Cuyahoga Cty. Bd. Of Revision*, 138 Ohio St.3d 223, 2014-Ohio-523, 923 N.E.2d 1144. We agree.

{¶44} In *HIN*, Tops Markets, L.L.C. was the owner of an office building. In 2003, U.S. Bank contracted to purchase the property from Tops, but assigned its purchasing rights to JBK Properties, Inc. JBK purchased the property from Tops for \$4.9 million and then leased it to U.S. Bank. JBK and U.S. Bank signed a triple-net lease (where the tenant agrees to pay utilities, maintenance, real estate taxes, and insurance). *Id.* at ¶ 3.

On April 29, 2004, JBK sold the property to HIN, L.L.C. for \$7.4 million. *Id.* at ¶ 4. For tax year 2006, the Cuyahoga County auditor set the value of the property at \$8 million. HIN filed a complaint with the BOR seeking a decrease in value to \$5 million. The BOR reduced the property value from \$8 million to the 2004 sale price of \$7.4 million. *Id.* at ¶ 6. HIN appealed to the BTA, seeking a reduction to \$4.9 million. *Id.* In support of their argument, HIN presented an appraisal and expert testimony to demonstrate the property was encumbered by a lease that should not be considered when determining the fee-simple taxable value of the real property. *Id.* at ¶ 7. The BTA rejected the argument and found the \$7.4 million sale price as the best evidence of value. *Id.* at ¶ 10.

{¶45} HIN appealed to the Ohio Supreme Court. It argued the \$7.4 million sale price did not represent the taxable value of the property, because the property was sold with a lease encumbrance. *Id.* at ¶ 11. It also argued the BTA erred in failing to consider HIN's independent appraisal as alternative evidence of value. *Id.*

{¶46} The Supreme Court rejected HIN's arguments. It first held that pursuant to the H.B. 260 version of R.C. 5713.03, the sale price was presumed to establish the value of real property. *Id.* at ¶ 14 citing *Cincinnati School Dist. Bd. Of Edn. v. Hamilton Cty. Bd. Of Revision*, 78 Ohio St.3d 325, 327, 677 N.E.2d 1197 (1997). The Court held:

“The *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction. *Cummins* at ¶ 13 (“a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-length character * * * are genuinely

present”); *HIN I*, 124 Ohio St.3d 481, 2010-Ohio-687, 923 N.E.2d 1144, at ¶ 27 (“the only considerations articulated in R.C. 5713.03 are whether the property has been the subject of an arm's-length sale between a willing seller and a willing buyer within a reasonable length of time”).

Id. In *HIN*, as in the present case, there was no factual dispute that the sale was a recent, arm’s-length transaction. The Court also found HIN’s appraisal evidence not relevant to the determination of property value. Appraisal evidence could not be considered if there was a recent, arm's-length sale price. *Id.* at ¶ 26.

{¶47} The Supreme Court considered HIN’s argument that because the property was sold with the lease attached, the sale price did not reflect the true value of the property for tax purposes. HIN argued that the court must consider the property in its unencumbered state. The Supreme Court stated:

We have rejected this argument numerous times. In *Berea*, 106 Ohio St.3d 269, 2005-Ohio-4979, 834 N.E.2d 782, we faced the question of how to value a property subject to two long-term leases. The property had recently been sold in an arm's-length transaction. The board of education argued that the BTA should have disregarded the sale price and valued the property as if unencumbered with the leases. The board also presented appraisal evidence of what that unencumbered value would be. We rejected the board's arguments and held that when there has been a recent arm's-length sale, the taxing authority must disregard appraisal evidence and accept the sale price as the true tax value of the property, regardless of any lease encumbrances. Thus, despite HIN's

contentions, a recent arm's-length sale price establishes the value of real property for tax purposes even if that property is encumbered by a long-term lease. *See also AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision*, 119 Ohio St.3d 563, 2008-Ohio-5203, 895 N.E.2d 830, ¶ 17 (“we reject the contention that the existence of a long-term lease resulting from a sale-leaseback makes the subsequent sale price not indicative of true value”); *Cummins*, 117 Ohio St.3d 516, 2008-Ohio-1473, 885 N.E.2d 222, at ¶ 18 (“the arm's-length sale price of a legal fee interest should *not* be adjusted on account of the mere existence of an encumbrance” [emphasis sic]); *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 45, 2008-Ohio-1588, 885 N.E.2d 934, ¶ 12 (same); *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532, 2008-Ohio-1595, 885 N.E.2d 236, ¶ 3 (holding that a sale price established the tax value of property, even though the property was encumbered by a long-term lease).

HIN, 2014-Ohio-523 at ¶ 20.

{¶48} The Supreme Court ultimately found the lease encumbrance and the appraisal evidence irrelevant and accepted the \$7.4 million sale price as the conclusive value of the property for tax purposes. *Id.* at ¶ 27.

{¶49} Based on the precedent of *HIN*, we find the sale-leaseback transaction and the appraisal evidence presented by Store Master to be irrelevant to the determination of the value of the Powell Property for tax purposes. Under the H.B. 260 version of R.C. 5713.03, the auditor shall consider the sale price of the property to be

the true value for taxation purposes if the sale was recent and at arm's-length. *Sapina*, 2013-Ohio-3028 at ¶ 20.

{¶50} The evidence presented to the BTA showed the sale-leaseback transaction occurred in December 2012. The transaction was conducted by Childcare Holdings, Compass Schools, and Store Master. Brill testified that Childcare Holdings and Compass Schools were unrelated to Store Master. The Conveyance Fee Statement presented as evidence by Olentangy BOE stated the parties sold the Powell Property for \$2,689,642.95. Store Master presented appraisal evidence to show the Powell Property was valued at \$1,600,000. The mandate of former R.C. 5713.03 "entails a rejection of appraisal evidence of the value of the property whenever a recent, arms'-length sale price has been offered as evidence of value." *Sapina*, 2013-Ohio-3028 at ¶ 20.

{¶51} For the foregoing reasons, we find that the BTA's decision to adopt the \$2,689,640 sale price from December 2012 as the value of the Powell Property for tax year 2012 was not unreasonable or unlawful. The decision of the BTA is affirmed.

{¶52} Store Master's six assignments of error are overruled.

CONCLUSION

{¶53} The September 19, 2014 Decision and Order of the Ohio Board of Tax Appeals is affirmed.

By: Delaney, J.,
Hoffman, P.J. and
Farmer, J., concur.

Hoffman, P.J., concurring

{¶54} I concur in the majority's analysis of Appellant's assignments of error.

{¶55} I write separately only to note, even if the H.B. 487 version of R.C. 5713.03 applies, the BOR "may" still use the sales price in determining the property's valuation. I find the record does not affirmatively demonstrate the BOR ignored Appellant's valuation evidence based on the leaseback agreement.

{¶56} I would affirm the BOR decision based on either version of R.C. 5713.03.

HON. WILLIAM B. HOFFMAN