[Cite as *Wellington Square, L.L.C. v. Clark Cty. Aud.*, 2010-Ohio-2928.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

WELLINGTON SQUARE, LLC	:	
	:	Appellate Case No. 2009-CA-87
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2009-CV-322
v.	:	
	:	
AUDITOR OF CLARK COUNTY, OHIO, et al.	:	(Administrative Appeal from Common Pleas Court)
	:	
Defendant-Appellants	:	
	:	

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O P I N I O N

Rendered on the 25th day of June, 2010.

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FAIN, J.

{¶ 1} Co-appellants Clark-Shawnee Local School District Board of Education (the Board of Education), and Clark County Board of Revision (the Board of Revision), appeal from a judgment reversing the Clark County Board of Revision's

decision to increase the county auditor's valuation of real property for tax purposes.[1] Co-appellants contend that the trial court erred in its valuation of the property. Co-appellants also contend that this court should review the evidence and reimpose the value established by the Board of Revision.

{¶ 2} We conclude that the trial court did not abuse its discretion in rejecting two sales of the real property as the best evidence of value. Although the sales were voluntary, they were not "arm's-length" transactions, because they did not take place in an open market. The party who sold the property in one sale and repurchased it in the other, is also a wholly-owned subsidiary of a charitable trust, and was not acting in its own self-interest.

{¶ 3} We further conclude that the trial court did not err in using the auditor's initial valuation of the property. There was no "affirmative negation" of the validity of the auditor's valuation of the property, and no party challenged the assessed value, either before the Board of Revision or on appeal to the common pleas court. Accordingly, the judgment of the trial court is Affirmed.

I

{¶ 4} The case before us involves real estate that was valued at $2,840,000 for purposes of a "like-kind" exchange under Section 1031, Title 26, U.S. Code. This allowed the sellers to avoid the consequences of paying capital gains tax on the sale of another piece of property they owned. A local school board then

[1]In the trial court, this action was brought against the Clark County Auditor, but on appeal, the prosecutor has captioned its brief on behalf of the Clark County Board of Revision. We will refer to the co-appellant as the Board of Revision.

unsuccessfully attempted to have the value of the acquired "like-kind" property raised for purposes of assessing property tax.

{¶ 5} In March 2008, the Board of Education filed a complaint with the Board of Revision regarding five parcels of real property owned by Deaton Company, LLC (Deaton). The Board of Education alleged that the tax value of these parcels was $2,840,000, based on a general warranty deed filed with the Clark County Auditor in November 2005. The deed indicated that the property had been transferred to Deaton by Wellington Square, LLC (Wellington Square), for a sales price of $2,840,000.

{¶ 6} The five parcels consist of separate building sites, located at Progress Drive and Old Selma Road. The Progress Drive site contains three parcels, and the Old Selma Road site contains two parcels, which include approximately 23 acres and a 66,000 square foot factory building with outbuildings, grounds, and parking areas. A six-acre portion of the property is farmed. The property is located at 2160 Old Selma Road, Springfield, Ohio. One of the two Old Selma Road parcels, Parcel Number 30000700027300013 (Parcel 013), is the subject of the case before us. When the Board of Education filed the complaint for valuation, Parcel 013 was valued at $266,520 for the land and $1,407,020 for the building, for a total taxable value of $1,673,540. This resulted in a taxable value of $585,740, and a net annual tax of $90,500.46.

{¶ 7} Wellington Square, the 2005 seller, is a wholly-owned subsidiary of the Harry M. and Violet Turner Charitable Trust (Turner Trust). According to documents in the record, the Turner Trust is designated as a 501(c)(3) charitable foundation by

the Internal Revenue Service. Wellington Square purchased Parcel 013 from Olan Mills Incorporated of Ohio for $1,100,000, in February 2003. Wellington Square then leased Parcel 013, as well as the other four parcels, to TAC Industries (TAC). TAC is a corporation whose members are the Board of Mental Retardation and Developmental Disabilities of Clark County, Ohio, and the Board of Trustees of ARC/Clark County, Ohio. TAC provides sheltered employment and services for mentally-retarded and developmentally disabled people in Clark County, Ohio.

{¶ 8} The lease between Wellington Square and TAC began in April 2003, and was to expire in March 2018. Paragraph 15.3 of the lease gave TAC the right to purchase the premises following the expiration of the term, at a price mutually agreeable to both parties.

{¶ 9} In June 2005, Wellington Square applied to the Ohio Tax Commissioner, seeking exemption of the five parcels, including the Old Selma Road property, from taxation. Subsequently, in November 2007, the Tax Commissioner held the five parcels generally exempt from taxation for tax years 2004 and 2005. The Commissioner concluded that the parcels, except for the six-acre portion leased for farming, were being used for charitable purposes. However, the Commissioner also ordered all five parcels restored to the tax list and duplicate for the tax year 2006, because of sales to Deaton and NextEdge Development Corporation (NextEdge), which listed itself as an Internal Revenue 501(c)(6) business league. The Commissioner noted that Deaton and NextEdge are separate entities from Wellington Square, and that any new owner must apply for its own exemption.

{¶ 10} Wellington Square sold the five parcels in November 2005, as part of a

complicated series of transactions that allowed an unrelated entity, Dearth Resources (Dearth), to take advantage of Section 1031, Title 26, U.S.C., which exempts exchanges of like-kind property from capital gains taxation.

{¶ 11} Dearth owned approximately 204 acres at the intersection of Titus Road and State Route 40, in Clark County, Ohio, that NextEdge wished to acquire to build the NextEdge Technology Park. NextEdge is a subsidiary of the Turner Trust.[2] There is no indication in the record that Dearth has any connection to the Turner Trust or to NextEdge, nor is there any indication that Dearth is a either a charitable or a non-profit organization.

{¶ 12} The sale price of the 204 acre parcel was approximately $4,000,000, and it was an arms-length transaction. Dearth needed to acquire replacement property, however, to accomplish a Section 1031 tax exchange and avoid capital gains taxes. Consequently, the Turner Trust offered Dearth replacement property in its inventory to facilitate the exchange. The property included three groupings – the five parcels, including Parcel 013, that were leased to TAC, and two other groupings known as the Cristal property and the King Ackerman farm. The value of these properties was allegedly equal to the sale price of the 204 acres. A sales price of $2,840,000 was allocated to the five-parcel grouping that included Parcel 013.

{¶ 13} Deaton was formed as a single-member, limited-liability company in 2005, to carry out the purchase and sale of Parcel 013 and related real estate transactions. Dearth is the sole member of Deaton. Ownership of Dearth's

[2]The Turner entity is referred to variously in the documents and pleadings as the Turner Trust or the Turner Foundation. We assume these references are to the same entity and will refer to the company as the Turner Trust.

240-acre parcel and the five parcels that included Parcel 013 were placed in Deaton. As noted, Wellington Square sold that five-parcel grouping to Deaton for $2,840,000.

{¶ 14} In November 2005, Dearth and Wellington Square also entered into a Repurchase and Option Agreement for Real Estate. The agreement indicated that Dearth had obtained the five-parcel grouping from Wellington Square through Dearth's wholly-owned subsidiary, Deaton. The agreement provided that Dearth could require Wellington Square to repurchase the property at any time after November 9, 2010, and before 2017, for a purchase price of $2,840,000 in cash, due at closing, which was to take place no later than December 31, 2017. The agreement also indicated that Wellington Square could demand to repurchase the premises for the same price and under the same condition as to a closing date, at any time before November 30, 2017.[3]

{¶ 15} In February 2006, Wellington Square's Vice-President, Raymond Hagerman, committed in writing that Wellington Square would convey the parcels of land located at 1535 Progress Drive and 2160 Old Selma Drive, to TAC, at lease maturity. The fee would be $1.00 and any transfer costs involved. Hagerman also stated that Wellington Square had a buy-back provision for the land per its transfer to Deaton in late 2005, and would execute the buy-back provision before TAC's lease matured.

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[3]The reason for these time-frames is that the existing lease between Wellington Square and TAC allowed TAC the right to purchase the property from Wellington Square within 90 days after expiration of the lease, at a price mutually agreeable to Wellington Square and TAC. The lease was scheduled to expire in April 2018, so Wellington Square would have had to re-purchase the property before that date.

{¶ 16} As noted, the Ohio Tax Commissioner determined in November 2007 that Parcel 013, as well as the other four parcels, would be placed back on the tax list for the year 2006, due to the sale to Deaton and NextEdge. In November 2008, Deaton applied for a real property tax exemption and remission for these parcels for all tax years commencing with the tax year 2006. Deaton claimed in the application that it was using the property for charitable purposes, in light of the lease to TAC, an Ohio non-profit corporation, and the ongoing involvement of: (1) Wellington Square, an "institution" whose sole member is a private foundation; and (2) NextEdge, which is a non-profit corporation. Among other things, the application pointed to the buy-back provision in the Wellington/Dearth Agreement, and Wellington Square's commitment to let TAC purchase the properties for $1.00 plus transfer costs.

{¶ 17} The Board of Education had filed the complaint for increase in valuation in March 2008. Deaton then sold the properties back to Wellington Square for $2,840,000 in December 2008. A few days later, Wellington Square sold the three Progress Drive parcels to TAC for $400,000, leaving ownership of the two remaining parcels, including Parcel 013, in Wellington Square.

{¶ 18} The Board of Revision held a hearing in January 2009, at which attorneys for the Board of Education presented evidence as to the $2,840,000 sales price that had been recorded for the two recent sales of the five parcels. This consisted of submitting the deeds showing the $2,840,000 sales price. An attorney testifying on behalf of Wellington Square and TAC indicated that these sales were not based on duress or a relationship between the parties. He stated, however, that the sales were not true "arms-length" transactions, because the properties were not

advertised for sale and the parties were working together to expedite the sale of the property to NextEdge for the technology park.

{¶ 19} Following submission of testimony and evidence, the Board of Revision filed a decision in February 2009, increasing the tax valuation of Parcel 013 from $1,673,540 to $2,247,140. The Board of Revision did not change the valuation of the remaining four parcels, which had been valued at a total of $592,860. Thus, the total valuation of the five parcels equals the $2,840,000 sales price that was recorded in 2005 and in 2008.

{¶ 20} Wellington Square appealed to the common pleas court, but only as to the valuation for Parcel 013. During the appeal, Wellington Square moved to submit additional evidence consisting of a deed transferring Parcel 013 from Wellington Square to TAC. The deed was executed on May 26, 2009, and bears a notation that it was filed with the Clark County Auditor on May 28, 2009. The transfer stamp indicates a sales price of $762,000. As part of its decision, the trial court granted the motion and indicated that it had reviewed and accepted the additional evidence in making its decision. The court accepted the reasoning in Wellington Square's brief, and concluded that the Board of Revision's decision was contrary to law and was not supported by the evidence. The trial court reversed the decision of the Board of Revision and held that Parcel 013 should be valued at $1,673,540.

{¶ 21} The Board of Education and the Board of Revision appeal from the judgment of the trial court.

II

{¶ 22} Both Boards have asserted two assignments of error that are virtually identical. Accordingly, we will refer only to the Board of Education's assignments of error, with the understanding that both parties' assignments of error are being considered and resolved. The Board of Education's First Assignment of Error is as follows:

{¶ 23} "THE TRIAL COURT ABUSED ITS DISCRETION IN REVERSING THE DECISION OF THE CLARK COUNTY BOARD OF REVISION SINCE THE BOARD OF REVISION'S DECISION WAS BASED UPON TWO SEPARATE SALE TRANSACTIONS FOR $2,840,000, AND UNDER OHIO LAW, THE SALE PRICE IS THE BEST EVIDENCE OF VALUE."

{¶ 24} Under this assignment of error, both Boards contend that the trial court abused its discretion by reversing the Board of Revision, because the record contains undisputed evidence of two different arm's-length sales transactions, in close proximity to the tax-lien date, that support the Board of Revision's valuation.

{¶ 25} In *Black v. Bd. of Revision of Cuyahoga Cty.* (1985), 16 Ohio St.3d 11, the Ohio Supreme Court outlined the following standards for appeals of decisions of boards of revision:

{¶ 26} "R.C. 5717.05 does not require a trial de novo by courts of common pleas on appeals from decisions of county boards of revision. The court may hear the appeal on the record and evidence thus submitted, or, in its discretion, may consider additional evidence. The court shall independently determine the taxable value of the property whose valuation or assessment for taxation is complained of, or, in the event of discriminatory valuation, shall determine a valuation that corrects

such discrimination. The judgment of the trial court shall not be disturbed absent a showing of abuse of discretion. " Id. at paragraph one of the syllabus.

{¶ 27} An abuse of discretion " 'implies that the court's attitude is unreasonable, arbitrary or unconscionable.' " *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219 (citation omitted). The Ohio Supreme Court noted in *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp*. (1990), 50 Ohio St.3d 157, 161, that most abuses of discretion result in decisions that are unreasonable, rather than arbitrary or unconscionable. A decision is unreasonable if it lacks a sound reasoning process. Id.

{¶ 28} Because the trial court relied on the additional evidence submitted, and adopted the reasoning of Wellington Square's brief, we assume that the trial court's decision is based on the following facts and conclusions: (1) Wellington Square sold Parcel 013 to TAC in May 2009, for $762,000; (2) the Clark County Auditor appraised Parcel 013 at $1,673,540; and (3) the unique nature of the sales transactions indicates that the sales were not conducted at arm's-length, since the property was not being openly marketed and Wellington Square was not acting solely in its own financial best interest.

{¶ 29} In arguing for reversal, both Boards contend that the rationale for deference is less compelling where the trial court does not conduct an independent evidentiary hearing. In this situation, both the trial and appellate court review the same record, and the trial court abuses its discretion by relying on subjective evidence, as opposed to objective evidence. Both Boards also contend that the best evidence of real property value is an actual recent arm's-length sale.

{¶ 30} R.C. 5713.03 requires county auditors to decide the true value of property from the best sources of information available. The auditor must also act in accordance with Chapters 5713 and 5715 of the Revised Code, and with uniform rules and methods established by the tax commissioner. In this regard, R.C. 5713.03 further states that:

{¶ 31} "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."

{¶ 32} In *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, the Ohio Supreme Court held that when "property has been the subject of a recent arm's-length sale between a willing seller and a willing buyer, the sale price of the property shall be 'the true value for taxation purposes.' " Id. at ¶ 13, quoting R.C. 5713.03. This is deemed to be the value, "regardless of other appraisal evidence or methods." *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532, 2008-Ohio-1595, at ¶ 11.

{¶ 33} An arm's-length sale is characterized by the following elements: "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox County Bd. of Revision* (1989), 47 Ohio St.3d 23, syllabus.

{¶ 34} The transactions in the case before us were voluntary, and no evidence of duress or compulsion was presented. Wellington Square contends, nevertheless,

that the sales were not at arm's-length, because they did not take place in an open market, and Wellington Square, as a subsidiary of a charitable trust, was not acting in its own self-interest.

{¶ 35} After *Walters* was decided, the Ohio Supreme Court acknowledged that it had never said that an "an open market is a 'necessary' element to an arm's-length transaction * * *." *Shiloh Automotive, Inc. v. Levin*, 117 Ohio St.3d 4, 2008-Ohio-68, at ¶ 23. The court stressed, however, that the open-market element is a significant component. In this regard, the court noted that while it had not required an "open-market" element, it had also previously "upheld the BTA's finding that a transaction was not at arm's length in the absence of an open-market sale." Id., citing *Kroger Co. v. Hamilton Cty. Bd. of Revision* (1993), 67 Ohio St.3d 145, 147. The court went on to observe that "Indeed, we reaffirmed *Kroger* earlier this year, holding that the absence of even one of the factors set forth in *Walters* is sufficient to support a finding that a transaction was not conducted at arm's length." 2008-Ohio-68, at ¶ 23, citing *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 112 Ohio St.3d 309, 2007-Ohio-6, at ¶ 13. Offering property on the open-market, therefore, is generally an important part of an arm's-length transaction.

{¶ 36} The real property involved in the case before us was not offered on the open market. The 2005 and 2008 sales transactions between Wellington Square and Deaton may facially appear to have been conducted at arm's-length, because the two entities are not related. In fact, the transactions were structured to let Dearth, a "for-profit" corporation, escape payment of capital gains tax. Other features of the transactions, however, indicate that the trial court did not act

unreasonably in concluding that the sales were not conducted at arm's-length.

{¶ 37} The Ohio Supreme Court has said that "once a sale price is presented that appears on its face to reflect a recent, arm's-length transaction, the opponent of using that sale price must shoulder the burden to show that the elements of a recent, arm's-length transaction were not present." *Cummins Property Services, L.L.C. v. Franklin County Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41. Wellington Square met this burden.

{¶ 38} According to a property record generated in November 2008, the last previous open-market sale occurred in 2003, when Wellington Square purchased Parcel 013 from Olan Mills for $1,100,000. No improvements were made between that time and the 2005 sale; in fact, the property card does not show any improvements after the year 1977. Other than the $2,840,000 sales figure assigned to the five-parcel property group for tax purposes, nothing in the record supports an increase in the amount of $1,157,140 in the value of Parcel 013 between 2003 and 2005.

{¶ 39} When the complaint for valuation was filed, the auditor's assessed value for Parcel 013 was $1,673,540, which was higher than the 2003 sales price. The Board of Revision increased the value of Parcel 013 by $573,600, to $2,247,140, while leaving the value of the other four parcels the same. Again, other than the value assigned in the 2005 transaction for tax purposes, nothing in the record supports an increase of this magnitude. The Board of Revision's decision also fails to indicate why it increased the value of one parcel, but left the value of the four other parcels unchanged. If the change in value was based on the 2005 sales

price, the Board of Revision should have increased the value of all five parcels equally, instead of assigning the total increase in value to one parcel.

{¶ 40} The remainder of the evidence also indicates that Wellington Square was not acting in its own financial self-interest during the 2005 and 2008 transactions. Wellington Square is a wholly-owned subsidiary of a charitable trust, and Parcel 013 was being used for charitable purposes. Wellington Square purchased Parcel 013 for $1,100,000, and agreed to repurchase it for the same price ($2,840,000) that had been assigned in 2005, regardless whether the repurchase took place immediately or many years later. In 2006, Wellington Square also agreed to sell all five parcels to TAC for $1.00 plus transfer costs, at lease maturity, which would have been in 2018. These facts indicate that Wellington Square was not acting in its own financial interest. This is particularly true in view of the lease agreement between Wellington Square and TAC, which stated that TAC would be able to purchase the property at lease termination at a mutually agreeable price. Presumably, a 23-acre parcel and a 66,000 square foot building would be worth much more than $1.00 at the expiration of the lease.

{¶ 41} Wellington Square, in fact, repurchased the five-parcel property in 2008 for $2,840,000. Wellington Square sold three parcels to TAC for $400,000 in 2008, and sold Parcel 013 to TAC in 2009, for $762,000. The total of these sales ($1,162,000), is far below the $2,840,000 assigned value, and is only slightly higher than the price paid for just one parcel (013) in 2003. By selling the properties, Wellington Square also gave up its right to collect rental payments for the next ten years. Accordingly, the trial court did not act unreasonably, arbitrarily, or irrationally

when it rejected the 2005 and 2008 sales prices as a basis for valuing the properties.

{¶ 42} Having rejected the Board's valuation, the trial court was free to decide a value to assign to the property. The court could have used the auditor's assessed value, or could have taken additional evidence. The court did allow additional evidence, and chose to use the auditor's assessed value of $1,673,540. This was not an abuse of discretion.

{¶ 43} The Ohio Supreme Court has said that "when a county auditor acts 'within the limits of the jurisdiction conferred by law,' the auditor's action is 'presumed, in the absence of proof to the contrary, to be valid and to have been done in good faith and in the exercise of sound judgment.' " *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948, at ¶ 13 (citation omitted). See, also, *Colonial Village Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, noting that the auditor has "no burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof at the BTA." Id. at ¶ 23, citing *Dayton-Montgomery*, 2007-Ohio-1948, ¶ 15; *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47, 48; and *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340, 342.

{¶ 44} In replying to Wellington Square's brief, the Board of Education contends that the trial court acted similarly to the Board of Tax Appeals in *Dayton-Montgomery*, by simply reverting to the auditor's decision, when evidence

was presented contradicting the auditor's determination. In this context, the Board cites the following passage from *Dayton-Montgomery*:

{¶ 45} "Today we hold that the reasoning we applied in *Columbus* (2001), *Columbus* (1996), and *Amsdell* also applies to the auditor's determination of value. Namely, when the evidence presented to the board of revision or the BTA contradicts the auditor's determination in whole or in part, and when no evidence has been adduced to support the auditor's valuation, the BTA may not simply revert to the auditor's determination. Whenever it does so, the BTA is acting unlawfully by making a finding of value that is affirmatively contradicted by the only evidence in the record." 2007-Ohio-1948, at ¶ 27.

{¶ 46} These comments have no bearing to the case before us, because *Dayton-Montgomery* involved a different situation. In *Dayton-Montgomery*, the valuation under consideration was not an alleged arms-length sale. Instead, the property owner challenged the auditor's valuation, as well as the auditor's addition of a 1.6% cost-factor that the auditor had used when applying the "cost-method" approach to valuing property. In considering the cost-value itself, the Supreme Court of Ohio noted that the auditor had not documented the procedures or schedules it followed in arriving at the cost value. The court stated, however, that an auditor's action is generally presumed to be the result of sound judgment, in the absence of contrary evidence. Id. at ¶ 13. This is the presumption we have mentioned, which we apply to the case before us.

{¶ 47} The Supreme Court of Ohio noted that this presumption remained largely intact in *Dayton-Montgomery*, except for the 1.6% cost-figure that the auditor

had added to its determination of the cost-value. Id. The court observed that the auditor had not explained the basis for this addition, and neither the school board nor the board of revision had offered any evidence to support the added cost factor. Id. at ¶ 14. The property owner had submitted affirmative evidence supporting its own assessment of the cost-value, which was similar to the auditor's cost-value, without the added 1.6% amount. The Supreme Court of Ohio held that the Board of Tax Appeals therefore erred in simply accepting the Board of Revision's decision. In doing so, the Ohio Supreme Court relied on its decisions in *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572, 1994-Ohio-314; *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 1996-Ohio-432; and *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 2001-Ohio-16. All these cases had rejected the notion that decisions of boards of revision should be given a presumption of validity. *Dayton-Montgomery*, 2007-Ohio-1948, at ¶ 23-24. The Ohio Supreme Court noted that instead of presuming validity, the Board of Tax Appeals is required to follow the standards outlined in *Black* (1985), 16 Ohio St.3d 11, which requires independent review of a board of revision's valuation. 2007-Ohio-1948, at ¶ 24.

{¶ 48} Later in the *Dayton-Montgomery* case, the Supreme Court of Ohio made the observation that the Board of Education has cited – that a board of tax appeals cannot simply revert to the auditor's determination, when contrary evidence appears in the record. Id. at ¶ 27. Unlike in the case before us, however, the owner in *Dayton-Montgomery* presented substantial evidence of the costs involved in constructing the building, and this evidence contradicted the unsupported finding of

the auditor as to the 1.6% cost factor that had been added.

{¶ 49} In fact, the Board of Education presented scant evidence at the hearing before the Clark County Board of Revision; the Board of Education relied solely on the sales prices reflected in the deeds recorded in 2005 and 2008. Furthermore, no party, either at the Board of Revision hearing, or on appeal, has presented evidence challenging the auditor's determination of assessed value. The case before us also does not involve use of the "cost-approach" method of valuation, which is a further factor distinguishing it from *Dayton-Montgomery*.

{¶ 50} We also note that the Supreme Court of Ohio subsequently explained that *Dayton-Montgomery* falls within a narrow exception to two usual principles: (1) that on appeal from the board of revision, the challenging party has the burden of establishing its proposed value as the value of the property; and (2) that "the board of revision (or auditor) bears no burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof at the BTA." *Colonial Village*, 2009-Ohio-4975, at ¶ 23-24. According to the court, this narrow exception involves situations where "the developed record before the BTA affirmatively negated the validity of the county's valuation of the property." Id. at ¶ 24. There is no "affirmative negation" of the validity of the auditor's valuation of the property in the case before us. The Boards, instead, simply contend that the 2005 and 2008 sales prices should be used, and the issue is whether these sales are "arm's-length" transactions. This issue is different from the issues involved in *Dayton-Montgomery*. Accordingly, the narrow exception does not apply, and would

not preclude the trial court from using the auditor's assessed value for Parcel 013.

{¶ 51} The First Assignment of Error raised by both the Board of Education and the Board of Revision is overruled.

III

{¶ 52} The Board of Education's Second Assignment of Error is as follows:

{¶ 53} "THE TRIAL COURT COMMITTED ERROR BY FAILING TO INDEPENDENTLY DETERMINE THE TAXABLE VALUE OF THE PROPERTY IN QUESTION UNDER R.C. 5717.05."

{¶ 54} Under this assignment of error, both Boards contend that the trial court committed error by failing to independently determine the value of Parcel 013. The Boards maintain that the trial court merely reverted back to the auditor's initial valuation, which lacks supporting evidence in the record.

{¶ 55} When parties appeal to common pleas court from a board of revision's decision, the trial court "has a duty on appeal to independently weigh and evaluate all evidence properly before it." *Black*, 16 Ohio St.3d at 13. The trial court must also "make an independent determination concerning the valuation of the property at issue." Id.

{¶ 56} In the case before us, the trial court admitted additional evidence, and took that evidence, as well as the arguments in Wellington Square's brief, into consideration in making its decision. The trial court's evaluation of the evidence in the record is obviously different from the evaluation by the board of revision, since the trial court came to a different conclusion. We have already discussed the

reasons why the trial court acted reasonably in choosing to use the auditor's existing valuation.

{¶ 57} The Second Assignment of Error of the Board of Education and the Board of Revision is overruled.

IV

{¶ 58} All the assignments of error of the Board of Education and the Board of Revision having been overruled, the judgment of the trial court is Affirmed.

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GRADY and FROELICH, JJ., concur.

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