

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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|---|---|--------------------|
| Board of Education of the South-Western<br>City Schools et al., | : |                    |
|   | : |                    |
| Appellants-Appellees,   | : |                    |
|   | : |                    |
| v.  | : | No. 14AP-729       |
| Franklin County Board of Revision,                              | : | (BTA No. 2013-521) |
|   | : |                    |
| Appellee-Appellee,  | : | (REGULAR CALENDAR) |
|   | : |                    |
| Bank Street Partners,   | : |                    |
|   | : |                    |
| Appellee-Appellant.   | : |                    |
|   | : |                    |

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D E C I S I O N

Rendered on May 12, 2015

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*Rich & Gillis Law Group, LLC, Mark H. Gillis, and  
Kimberly G. Allison, for appellee Board of Education of the  
South-Western City Schools.*

*Michael N. Schaeffer, for appellant.*

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APPEAL from the Ohio Board of Tax Appeals

SADLER, J.

{¶ 1} Appellant, Bank Street Partners ("Bank Street"), appeals from a decision and order of the Ohio Board of Tax Appeals ("BTA") determining the taxable value of certain real property as of January 1, 2011. For the following reasons, we reverse the judgment of the BTA.

## **I. FACTS AND PROCEDURAL HISTORY**

{¶ 2} In 2006, Bank Street purchased three parcels of undeveloped real property in the South-Western City School District. In 2011, the Franklin County Auditor ("auditor") assigned a total true value of \$661,800 to the property as follows: \$263,600 for Parcel No. 570-278106, \$242,300 for Parcel No. 570-278107, and \$155,900 for Parcel No. 570-278108. On April 2, 2012, Bank Street filed a complaint against valuation, seeking a reduction of true value to \$430,000. Appellee, Board of Education of the South-Western City School District ("BOE"), filed a counter-complaint seeking to retain the auditor's valuation.

{¶ 3} On January 23, 2013, the Franklin County Board of Revision ("BOR") conducted an evidentiary hearing on the complaint. On February 11, 2013, the BOR issued a decision reducing the total true value of the three parcels to \$420,000 as follows: \$167,000 for Parcel No. 570-278106, \$153,800 for Parcel No. 570-278107, and \$99,200 for Parcel No. 570-278108. The BOE appealed to the BTA seeking reinstatement of the auditor's valuation.

{¶ 4} Following an evidentiary hearing on October 29, 2013, the BTA determined that appellee presented insufficient evidence to support the BOR's reduction in value. Accordingly, the BTA reinstated the auditor's value. Bank Street filed a notice of appeal to this court on September 16, 2014.

## **II. ASSIGNMENTS OF ERROR**

{¶ 5} Bank Street assigns the following three assignments of error:

I. The Board of Tax Appeals ("BTA") erred in simply reverting back to the Auditor's original assessment of value by not making its own independent determination of value.

II. The BTA erred by not finding that competent, credible and probative evidence was submitted to the Board of Revision ("BOR") sufficient to support the BOR's opinion of value.

III. The BTA erred in sustaining the appeal of Appellants challenging the BOR when the Appellants failed to come forward and offer evidence which demonstrated its right to the value sought.

### III. STANDARD OF REVIEW

{¶ 6} An appellate court reviews decisions of the BTA to determine whether they are reasonable and lawful. *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision*, 10th Dist. No. 14AP-167, 2014-Ohio-4360. In *Columbus City Schools*, we stated:

The fair market value of property for tax purposes is a question of fact, the determination of which is primarily within the province of the taxing authorities and an appellate court will not disturb a decision of the BTA unless it affirmatively appears from the record that such decision is unreasonable or unlawful.

The BTA's findings of fact are to be affirmed if supported by reliable and probative evidence, and the BTA's determination of the credibility of witnesses and its weighing of the evidence are subject to a highly deferential abuse-of-discretion review on appeal. However, we will reverse a BTA decision if the decision is based on an incorrect legal conclusion.

(Internal citations omitted.) *Id.* at ¶ 19, quoting *Piepho v. Franklin Cty. Bd. of Revision*, 10th Dist. No. 13AP-818, 2014-Ohio-2908, ¶ 4-5.

### IV. LEGAL ANALYSIS

#### A. First Assignment of Error

{¶ 7} In Bank Street's first assignment of error, Bank Street argues that the BTA erred in simply reverting back to the auditor's original assessment of value and not making its own independent determination of value. In this regard, we note that a property's "true value" for a particular tax year is either the sale price, if the sale occurred within a reasonable length of time from the tax year and the sale was at arm's length (Ohio Adm.Code 5703-25-05(A)(2), R.C. 5713.03), or the property's fair or current market value (Ohio Adm.Code 5703-25-05(A)(1), R.C. 5713.31). In this case, the latest sale of the property was the sale to Bank Street in 2006. There is no dispute that the 2006 sale is too remote in time to provide a valid measure of true value in 2011. Bank Street did not have the property appraised by an expert. Rather, Bank Street elected to proceed on its complaint for a decrease in value based solely upon the testimony of a property owner.

### **1. Evidence Produced at the BOR**

{¶ 8} Testimony before the BOR established that Larry Clarke is a partner in Bank Street and that he is a licensed real estate broker. Clarke claimed to have bought or sold more than 100 properties in his capacity as a partner in Bank Street. He is not a licensed real estate appraiser.

{¶ 9} Clarke stated that Bank Street purchased the three parcels at issue in September 2006 at a price of \$313,000 and that he negotiated the purchase price through the prior owner's broker. According to Clarke, Bank Street intended to either sell the property or find a third-party willing to lease the site for future development. To that end, Clarke listed the property for sale on his own web site.

{¶ 10} Clarke opined that the three parcels at issue in this case were "worth" \$420,000 as of January 1, 2011.<sup>1</sup> Clarke explained that he arrived at this figure by comparing asking prices for other properties in the area. He also opined that the market value for the property is \$420,000 currently. On cross-examination, Clarke admitted that Bank Street had never obtained an appraisal of the property.

{¶ 11} Clarke testified that Prairie Township had recently hired him to find eight to ten acres of undeveloped land upon which it could build a senior citizen center. At the time of the hearing before the BOR, Clarke stated that Prairie Township had just executed a real estate purchase contract whereby it agreed to purchase nine acres on West Broad Street and Galloway Road for \$360,000 or \$40,000 per acre. Clarke testified that the listing price for the nine-acre Prairie Township property was \$750,000. Clarke did not disclose the location of the Prairie Township property in relation to the three parcels in question, nor did he describe the Prairie Township property in any meaningful way. Nevertheless, Clarke opined that the three parcels of property that are the subject of this action are on a better site than the Prairie Township property.

{¶ 12} Other than its counsel's cross-examination of Clarke, the BOE did not present evidence at the hearing before the BOR. Rather, the BOE relied upon its cross-examination of Clarke and the auditor's valuation. The BOE appealed to the BTA from the BOR's decision to decrease the value of the property.

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<sup>1</sup> The testimony at the BOR is recorded on an audio disc, but it has not been transcribed.

## **2. Appeal to the BTA**

{¶ 13} R.C. 5717.01 governs proceedings before the BTA in an appeal from the BOR. *Coventry Towers, Inc. v. Strongsville*, 18 Ohio St.3d 120, 122 (1985). The statute gives the BTA three options when hearing an appeal: the board may confine itself to the record and the evidence certified to it by the BOR, hear additional evidence from the parties or may make such other investigation of the property as is deemed proper. *Id.* In *Coventry*, the Supreme Court of Ohio held that in order to fully perform its statutory duty of establishing the taxable value of property, the BTA must consider a valuation analysis revised since being offered at the BOR. *Id.*

{¶ 14} In this instance, the BTA elected to hold an evidentiary hearing on the matter in addition to a review of the certified record of the BOR. The BTA conducted an evidentiary hearing on October 29, 2013, at which time the BTA heard additional evidence.

## **3. Evidence Produced at the BTA**

{¶ 15} At the hearing before the BTA, Bank Street once again presented the testimony of Clarke, who related that he is a real estate broker with 40 years of experience in commercial real estate and that he owns a company known as City Corporation which has a 25 percent stake in Bank Street. He also owns a company known as Corum Real Estate Company ("Corum"). Clarke testified that Bank Street bought the three parcels at issue from a now-defunct condominium developer in June 2006 for the total price of \$313,000. Clarke negotiated the purchase price on behalf of Bank Street, and he is listed as the broker. According to Clarke, State Street purchased the land at Norton Road and Sullivant Avenue as an investment property for future resale or development.

{¶ 16} Clarke testified that the property has generated very little interest since Bank Street put it on the market and that there has been very little development in the area. According to Clarke, Bank Street's efforts to sell the property have consisted of erecting four four-by-eight signs on the property advertising it for sale and listing the property on the Excelergy web site. Clarke recalled that shortly after Bank Street acquired the property, he received an offer from O'Riley's Auto Parts, but O'Riley's backed out of

the deal because they desired property closer to Broad Street. Clarke was not asked about the amount of the offer. Clarke stated that O'Riley's offer has been the only interest expressed in the property.

{¶ 17} Clarke testified that Corum brokered a recent purchase by the BOE of nine acres of undeveloped land in Prairie Township. He stated that the Prairie Township property is just 1.9 miles away from the three parcels that are the subject of this litigation. According to Clarke, the total purchase price was \$360,000 or \$40,000 per acre. The settlement statement for the purchase, which was offered into evidence by Bank Street, shows that the sale closed on April 4, 2013 and that Corum received a commission of \$10,800 on the sale.

{¶ 18} Clarke testified that he is aware that the BOE had purchased 40 acres of undeveloped property on Holt Road and Big Run Road in December 2012 for the price of \$19,700 per acre. According to Clarke, "a few years prior" he sold property to the BOE located directly across the street from the Holt Road location for a price of \$31,000 per acre. (BTA Tr. 16.)

{¶ 19} Based upon his ownership interest in the subject property, the comparable sales in the area, and his knowledge, skill, and experience as a real estate broker and developer, Clarke opined that the fair market value of the three parcels as of January 1, 2011 was \$430,000. Clarke apportioned the value among the three parcels as follows: \$145,000 for Parcel No. 570-278106, a 2.017 acre tract, \$175,000 for Parcel No. 570-278107, a 2.472 acre tract, and \$110,000 for Parcel No. 570-278108, a 1.79 acre tract. Clarke explained that he valued Parcel No. 570-278108 at a lower per acre figure because it contained a flood plain area and that he assigned a higher per acre value to Parcel No. 570-278107 because it had more frontage.

{¶ 20} On cross-examination, Clarke stated that he listed the property for sale on the Excelergy web site but not on the Multiple Listing Service. Although Clarke believes the property is still listed with Excelergy, he was unable to recall the asking price. Clarke acknowledged that he has never been licensed as a real estate appraiser and that State Street has never had the parcels evaluated by a licensed appraiser. He also admitted that although his company brokered the purchase of the Prairie Township property, he had no

personal involvement in the transaction. During the BTA hearing, counsel for the BOE interposed the following objection to Clarke's opinion testimony:

Okay. We would just note that any testimony that Mr. Clarke provided regarding the circumstances surrounding the sale [Holt Road] would be hearsay and we would raise an objection to that testimony.

And while we note that Mr. Clarke, as an owner, is competent to provide an opinion of value, he has not been qualified as a real estate appraisal expert; therefore, we would also object to any opinion of value as to the comparability of any sale comparables that have been discussed here today in relation to the subject parcels.

(BTA Tr. 24.)

{¶ 21} Other than counsel's cross-examination of Clarke, the BOE did not present evidence at the hearing before the BTA, choosing instead to rely upon its cross-examination of Clarke and the auditor's original assessment.

#### **4. The Owner-Opinion Rule**

{¶ 22} In *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, the Supreme Court discussed the application of the "owner-opinion" rule in proceedings before the BTA:

Ordinarily, testimony as to property value is not competent and admissible unless it is the professional opinion of an expert. *See Tokles & Son, Inc. v. Midwestern Indemn. Co.*, 65 Ohio St.3d 621, 605 N.E.2d 936 (1992), paragraph one of the syllabus ("It is a general rule of evidence that before one may testify as to his opinion on the value of property, one must qualify as an expert"). But equally well recognized is the exception allowing an owner "to testify concerning the value of his property without being qualified as an expert, because he is presumed to be familiar with it from having purchased or dealt with it." *Id.*, paragraph two of the syllabus.

Indeed, "Ohio law has long recognized that an owner of either real or personal property is, by virtue of such ownership, competent to testify as to the market value of the property." *Smith v. Padgett*, 32 Ohio St.3d 344, 347, 513 N.E.2d 737 (1987). Grounds for this "owner-opinion rule" lie in the assumption that the owner " 'possess[es] sufficient

acquaintanceship with [the property] to estimate the value of the property, and [the owner's] estimate is therefore received *although his knowledge on the subject is not such as would qualify him to testify if he were not the owner.*' " (Emphasis added in *Smith*.) *Id.*, quoting 22 Corpus Juris, Evidence, Section 685, at 586-587 (1920). The court has recognized the validity of the owner-opinion rule in the context of valuing realty for tax purposes. *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572, 574, 1994 Ohio 314, 635 N.E.2d 11 (1994); *WJJK Invests., Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 32, 1996 Ohio 437, 665 N.E.2d 1111 (1996); *Valigore v. Cuyahoga Cty. Bd. of Revision*, 105 Ohio St.3d 302, 2005-Ohio-1733, 825 N.E.2d 604, ¶ 5. Important in the owner-opinion rule, however, is that the owner qualifies primarily as a fact witness giving information about his or her own property; usually the owner may not testify about comparable properties, because that testimony would be hearsay. *See Raymond v. Raymond*, 10th Dist. Franklin No. 11AP-363, 2011-Ohio-6173, ¶ 19-20.

(Emphasis sic.) *Id.* at ¶ 18-19.

{¶ 23} The *Worthington* case is the most recent authority from the Supreme Court applying the owner-opinion rule in the context of an appeal to the BTA. In *Worthington*, the taxpayer/owner appealed to the BOR seeking a decrease in the property values assessed by the auditor. At the BOR hearing, the corporate owner of the property presented the testimony of an employee with both knowledge and experience in real estate tax valuation and a Masters in Business Administration. The school district did not present any evidence at the BOR, did not object to the witness's opinion of fair market value, and did not cross-examine the witness. In the appeal to the BTA, the parties waived a hearing and presented their arguments through briefs, relying on the record developed before the BOR. The BTA subsequently refused to recognize the witness as an owner, rejected the opinion testimony as incompetent, and reinstated the auditor's valuation.

{¶ 24} The Supreme Court reversed the BTA and reinstated the auditor's valuation. The court in *Worthington* concluded as follows:

Because it found the owner's valuation to be not probative, and because it confronted an absence of additional evidence,



the BTA ordered that the auditor's value be reinstated. While this is a logical disposition, the BTA nonetheless erred in rendering it. That is so because our decision in *Bedford Bd. of Edn.*, 115 Ohio St.3d 449, 2007-Ohio-5237, 875 N.E.2d 913, prescribes a different rule under these circumstances: when the board of revision has reduced the value of the property based on the owner's evidence, that value has been held to eclipse the auditor's original valuation.

In *Bedford*, as here, the owner presented an owner's opinion of value using the income approach and utilizing actual income and expenses. Even though the owner's opinion relied entirely on income and expenses of the subject property, rather than data derived from the larger market, we held in a four-to-three decision that the BTA had erred by reverting to the auditor's valuation inasmuch as the owner's evidence (despite those defects identified by the BTA) had negated that valuation.

\* \* \*

In sum, the rule from the *Bedford* case precluded the BTA's reverting to the auditor's valuation in spite of the BTA's findings about the probative force of the evidence that Northpointe presented at the BOR. Under these circumstances, the BOR's adopting a new value based on [the owner's] testimony "shift[ed] the burden of going forward with evidence to the board of education on appeal to the BTA." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 193, 2013-Ohio-4543, 11 N.E.3d 206, ¶ 16, analysis regarding burden undisturbed on reconsideration, 139 Ohio St.3d 212, 2014-Ohio-1940, 11 N.E.3d 222, ¶ 10. Since no new evidence was presented at the BTA, the BTA should have retained the BOR's valuation of the property.

*Id.* at 35-36, 41.

{¶ 25} The BOE argues that *Worthington* is distinguishable from this case because Clarke's testimony is neither competent nor probative. Specifically, the BOE contends that "[c]learly the BOR's decisions herein were not based upon competent probative evidence since the property owner has failed to submit ANY evidence relating to the values of the individual parcels at issue in this case." (Emphasis sic.) (Appellee's brief, 16-17.) While this is true with respect to Clarke's testimony at the BOR, as noted above,

Clarke's testimony at the BTA included his opinion of the fair market value for each of the parcels in question as of January 1, 2011. He also provided reasons why he assigned a different value per acre for each of the three parcels. Thus, the *Worthington* case is not distinguishable on the specific grounds asserted by the BOE.

{¶ 26} Bank Street argues that the *Worthington* case requires a reversal of the BTA decision and reinstatement of the BOR decision. Here, as in *Worthington*, the BOR accepted the owner's opinion regarding fair market value. Under *Worthington* and the *Bedford* rule, when the BOR has reduced the value of the property based on the owner's evidence, that value eclipses the auditor's original valuation. Thus, a strict application of *Worthington* to the circumstances of this case means that the BTA was precluded from reverting back to the auditor's valuation in spite of its conclusion that Bank Street's evidence at the BOR lacked probative value. Here, the BOR's adoption of a decreased value for the property based on Clarke's testimony shifted the burden to the BOE to produce other evidence in support of the auditor's valuation in its appeal to the BTA. *Id.* According to Bank Street, since the BOE presented no new evidence in support of the auditor's valuation, the BTA should have retained the BOR's valuation of the property.

{¶ 27} In discussing the application of the rule in *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237, in an owner-opinion case, the *Worthington* court stated:

[T]he *Bedford* rule addresses circumstances in which the board of revision relies on specific and plausible evidence to reach a valuation different from that originally found by the auditor.

The *Bedford* rule is particularly applicable in circumstances like those presented here. In this case, the BOE opposed the owner's opinion of value and could have stated before the BOR the reasons that it should not adopt that valuation, but it failed to do so. In this respect, the present case differs dramatically from *Vandalia-Butler*, 130 Ohio St.3d 291, 2011-Ohio-5078, 958 N.E.2d 131. Here, the BOE failed to inform the BOR of reasons why the owner's opinion was not competent or probative, whereas in *Vandalia-Butler*, the board of revision's notes "reflect[ed] that the BOE objected to the appraisal report as hearsay 'because the appraiser wasn't

[at the hearing] to question.' " *Id.* at ¶ 4-5. *Compare Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 130 Ohio St.3d 230, 2011-Ohio-3362, 957 N.E.2d 268, ¶ 18-20 (hearsay objection to written appraisal report was waived because it was not raised before the board of revision).

Moreover, Northpointe actually presented [the owner's] as a witness before the BOR, thereby making him available for cross-examination, but the BOE's counsel failed to use that opportunity to build a record that would have permitted the BOE to "meet its burden of proof before the BTA by showing—through cross-examination of [the witness] \* \* \*—that the board of revision had erred when it reduced the value from the amount first determined by the auditor." *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 157, 2005-Ohio-4385, 833 N.E.2d 271, ¶ 9.

*Id.* at ¶ 38-40.

{¶ 28} As previously noted, the BOE cross-examined Clarke in the BOR proceedings. In the proceedings at the BTA, counsel for the BOE not only cross-examined Clarke, she interposed objections to certain portions of Clarke's testimony. Thus, under the circumstances of this case, *Worthington* does not necessarily require the result desired by Bank Street.

{¶ 29} In *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 157, 2005-Ohio-4385, the auditor assessed the value of an apartment complex at \$5,994,310. The owner filed a complaint with the BOR seeking a reduction in value to \$3,980,000. At the BOR hearing, the owner presented the testimony of a real-property tax consultant in support of a lower valuation. The BOR reduced the value of the property to \$4,147,200, and the school district appealed.

{¶ 30} The BTA discounted the opinion testimony of the tax consultant because he was not qualified to offer expert testimony of the property's value. However, at the BTA hearing, the owner presented the additional testimony of a state-certified real estate appraiser. The appraiser calculated a value for the property under three different methods to reach his final conclusion that the property's value was \$4,000,000. The BTA found the appraiser's opinion unconvincing, describing his cost-approach analysis as "circular" and characterizing his income analysis as "unreliable." The BTA further found

that the appraisal was not "probative" of the property's value. In the absence of any other competent and probative evidence supporting the BOR's reduction in value, the BTA reversed the BOR's decision and reinstated the auditor's valuation. *Id.* at ¶ 8.

{¶ 31} In *Vandalia-Butler*, the Supreme Court stated:

In the absence of probative evidence supporting the reduction in value ordered by the board of revision, and in light of the problems identified by the BTA with the even lower value proposed by the [owner's] appraiser, the BTA's conclusion that the county auditor's original valuation should be reinstated was not unreasonable. "In the absence of probative evidence of a lower value," a county board of revision and the BTA "are justified in fixing the value at the amount assessed by the county auditor." *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision* (1998), 82 Ohio St.3d 193, 195, 1998 Ohio 248, 694 N.E.2d 1324. The BTA's decision to reject the board of revision's valuation and reinstate the auditor's original finding is supported by the evidence, and the BTA did not abuse its discretion in reaching that conclusion.

*Id.* at ¶ 12.

{¶ 32} *Vandalia-Butler* is significant in this appeal for several reasons. First, the case stands for the proposition that even though the BOR has accepted the owner's evidence of a lower value, the BTA is justified in reinstating the auditor's valuation if it finds that the owner's witness was not competent to provide an opinion of fair market value. Under such circumstances, the *Bedford* rule would not apply. *Worthington* at ¶ 39. Second, as noted above, the Supreme Court in *Worthington* has cited *Vandalia-Butler* for the proposition that a board of education, in an appeal from the BOR's decision to decrease the value assessed by the auditor, may "meet its burden of proof before the BTA by showing—through cross-examination of [the witness] \* \* \*—that the board of revision had erred when it reduced the value from the amount first determined by the auditor." *Worthington* at ¶ 40. Finally, the case stands for the proposition that even though the owner presents the additional testimony of a competent expert witness in proceedings before the BTA, the BTA may reinstate the auditor's valuation if it finds that the opinion of the owner's witness does not have probative value. *Vandalia-Butler* at ¶ 12.

## 5. The BTA Decision

{¶ 33} Here, the BTA decision reads, in relevant part, as follows:

*The BOR reduced the value of the subject property based on the owner's testimony regarding his marketing efforts and the amount for which he would agree to sell the property. This board has previously found that asking prices are not competent and probative evidence of a property's worth.* \* \* \* Additionally, we recognize that a variety of professionals may provide valuation services. We must also note, however, that real estate salespeople "have training in their field but may or may not have extensive appraisal experience. They are generally familiar with properties in a given locale and have access to market information. They frequently use sales and other market information for property comparison purposes in pricing. Some may develop appraisal expertise. As a group, real estate salespeople evaluate specific properties, but they typically do not consider all the factors that professional appraisers do." *The Appraisal of Real Estate* (13th Ed. 2008), 8-9.

When the value of property is adjusted from that at which it was originally assessed, such adjustment, whether effected by this board or a board of revision, must be supported by sufficient competent and probative evidence. When a board of revision adjusts value which does not meet this criteria or the rationale for the value adopted cannot be discerned, it may be appropriate to reinstate the property's original valuation. *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 157, 2005-Ohio-4385; *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078, ¶21. \* \* \* Accordingly, upon consideration of the existing record, we are constrained to conclude that there exists insufficient evidence to support the BOR's reduction in value and, as a result, we must reinstate those values originally assessed by the auditor.

(Emphasis added.) (Sept. 5, 2014 Decision and Order, 2-3.)

{¶ 34} Although the BTA decision concludes that Bank Street presented insufficient evidence to support the BOR's reduction in value, the BTA decision does not contain any factual findings in support of that conclusion. With regard to the threshold

issue of Clarke's competency to offer his opinion of fair market value, Clarke testified in his capacity as both an owner of the subject real property and as a real estate broker with experience in the local market and knowledge of recent sales of commercial real estate in the area. Because Clarke is an owner of the property, he is competent to offer his opinion of fair market value. The BOE acknowledged Clarke's competency at the proceedings before the BTA, but objected to his opinion of fair market value on other grounds. Because the BTA decision contains no finding regarding Clarke's competency and no ruling upon the objection interposed by the BOR, we are unable to determine whether the BTA engaged in the burden-shifting analysis required by *Worthington*.

{¶ 35} With regard to the probative value of Bank Street's evidence, we note that the BTA decision contains the following introductory statement: "This matter is now considered upon the notice of appeal, the transcript certified by the BOR \* \* \* *and the record of the hearing before this board.*" (Emphasis added.) (Sept. 5, 2014 Decision and Order, 1.) However, the only specific reference to Clarke's testimony is the statement that "[t]he BOR reduced the value of the subject property based on the owner's testimony regarding his marketing efforts and the amount for which he would agree to sell the property." (Sept. 5, 2014 Decision and Order, 2.) The decision contains no discussion of Clarke's testimony at the BTA, which was more extensive than his testimony at the BOR.

{¶ 36} In *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 132 Ohio St.3d 371, 2012-Ohio-2844, the Supreme Court "recognized that the BTA 'has the duty to state what evidence it considered relevant in reaching its determination,' and we thereby require that the BTA evaluate the evidence before it in making its findings." *Id.* at ¶ 18, quoting *HealthSouth Corp. v. Levin*, 121 Ohio St.3d 282, 2009-Ohio-584, ¶ 34, 36. The court further stated:

We hold that the BTA erred by ignoring and failing to weigh the significance of the testimony regarding the seller's tax motivations in allocating the sale price to the subject property. Because it is the duty of the BTA to weigh the evidence and determine the facts concerning valuation, we must remand for proper consideration of the effect of that testimony.

\* \* \*

When the BTA's decision is "silent on the subject" of potentially material evidence, that silence makes the court " 'unable to perform its appellate duty,' " with the result that the proper course is to remand so that the BTA may afford the taxpayer the review of the evidence that is its due. *Dublin Senior Community L.P. v. Franklin Cty. Bd. of Revision*, 80 Ohio St.3d 455, 462, 687 N.E.2d 426 (1997), quoting *Howard v. Cuyahoga Cty. Bd. of Revision*, 37 Ohio St.3d 195, 197, 524 N.E.2d 887 (1988).

*Id.* at ¶ 3, 29.

{¶ 37} The *Worthington* court likewise stated that "the BTA unquestionably had a duty to independently weigh all the evidence before it, which in this case consisted of evidence adduced before the BOR." *Id.* at ¶ 34, citing *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996); *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 25, citing *Vandalia-Butler* at ¶ 13. Here, Bank Street called Clarke as a witness both at the BOR hearing and the BTA hearing. As previously discussed, Clarke provided testimony at the BTA that he did not provide at the BOR. The BOE's counsel also engaged in a more substantial cross-examination of Clarke at the BTA and interposed specific objections to certain portions of Clarke's testimony. In addition to the competency objection, the BOE asserted a hearsay objection to Clarke's testimony regarding the comparable sale on Holt Road. The BTA decision does not contain a ruling upon the BOE's hearsay objection.

{¶ 38} Pursuant to *Worthington*, the BTA had a duty to weigh all the evidence before it, including the new evidence submitted at the October 29, 2013 hearing. *See Columbus City Schools* (BTA erred by reverting to the auditor's valuation without first considering the additional testimony presented by the property owner at the BTA hearing). Yet the BTA decision contains no mention of the evidence presented at the BTA hearing, no ruling upon the objections, and no finding regarding Clarke's credibility. *See, e.g., Vandalia-Butler* at ¶ 15 ("BTA \* \* \* erred by adopting the BOR's valuation without addressing the hearsay objection."); *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 49 (1998) (although an owner of real property is competent to express an opinion regarding value, the BTA may reject the testimony if it is not credible). The BTA decision also lacks the type of critical analysis that was cited with approval by the

Supreme Court in *Vandalia-Butler*. Given the state of the BTA decision, we cannot conclude that the BTA satisfied its duty to weigh the evidence and determine the facts concerning valuation.

{¶ 39} Accordingly, it is our determination that the BTA abused its discretion in failing to make a finding regarding Clarke's competence to provide an opinion of fair market value and by failing to rule upon the BOE's competency objection. Because of this error, we are unable to determine whether the BTA engaged in the burden-shifting analysis required by *Worthington*. We further find that the BTA abused its discretion in concluding that Bank Street's evidence was not sufficient without first considering the new evidence presented at the October 29, 2013 hearing, including cross-examination, and by failing to rule on the BOE's hearsay objection. Accordingly, we hold that the BTA's decision to simply revert to the auditor's value was unreasonable and unlawful. For these reasons, we sustain Bank Street's first assignment of error.

{¶ 40} Having sustained Bank Street's first assignment of error, we must reverse the judgment of the BTA and remand the matter for further proceedings. In this regard, it is axiomatic that " '[u]pon remand from an appellate court, the [trial] court is required to proceed from the point at which the error occurred.' " *State ex rel. Douglas v. Burlew*, 106 Ohio St.3d 180, 2005-Ohio-4382, ¶ 9, quoting *State ex rel. Stevenson v. Murray*, 69 Ohio St.2d 112, 113 (1982). In this instance, the BTA erred by failing to make a threshold determination concerning Clarke's competence and by failing to make a determination whether the BOE met its burden under *Worthington* and *Vandalia-Butler*. Accordingly, upon remand, the BTA must examine and evaluate all the evidence before it in light of *Worthington* and *Vandalia-Butler*.<sup>2</sup>

{¶ 41} Because we have sustained Bank Street's first assignment of error and remanded the case for the BTA to examine and evaluate the evidence in light of *Worthington* and *Vandalia-Butler*, Bank Street's second and third assignments of error are rendered moot.

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<sup>2</sup> In fairness to the BTA, we note that the Supreme Court decided the *Worthington* case just days prior to the BTA decision and order in this case.



**V. CONCLUSION**

{¶ 42} Having sustained Bank Street's first assignment of error and having determined that Bank Street's second and third assignments of error are moot, we reverse the judgment of the Ohio Board of Tax Appeals and remand the case for further proceedings.

*Judgment reversed;  
cause remanded.*

KLATT and DORRIAN, JJ., concur.

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