[Cite as *Gillis v. Delaware Cty. Bd. of Revision*, 2026-Ohio-3808.]

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
DELAWARE COUNTY, OHIO

MARK H. GILLIS Plaintiff - Appellee -vs- DELAWARE COUNTY BOARD OF REVISION, et al. Defendants - Appellees and NORTHLAKE SUMMIT LLC Defendant - Appellant	Case No. 25 CAH 11 0101
MARK H. GILLIS Plaintiff - Appellee -vs- DELAWARE COUNTY BOARD OF REVISION, et al. Defendants - Appellees and POWELL GRAND COMMUNITIES, LLC Defendant - Appellant	Case No. 25 CAH 11 0102
MARK H. GILLIS Plaintiff - Appellee	Case No. 26 CAH 02 0014

-vs-	
DELAWARE COUNTY BOARD OF REVISION, et al.	<u>Opinion & Judgment Entry</u>
Defendants - Appellees	Appeals from the Ohio Board of Tax Appeals, Case Nos. 2023-1476, 2023-1477, and 2023-1475
and	
RUSHMORE OH PARTNERS LLC	Judgment: Affirmed
Defendant - Appellant	Date of Judgment: September 25, 2026

BEFORE: Craig R. Baldwin, Andrew J. King, and David M. Gormley, Judges

APPEARANCES: Karol C. Fox and Kelley A. Gorry (Rich & Gillis Law Group, LLC), Dublin, Ohio, for Plaintiff-Appellee; Nicholas M.J. Ray, Lauren M. Johnson, Steven L. Smiseck, and Megan Savage Knox (Vorys, Sater, Seymour and Pease LLP), Columbus, Ohio, for all three Defendants-Appellants.

Gormley, J.

{¶1} The three appellants own large apartment buildings in Delaware County, and each of them challenges Ohio Board of Tax Appeals (BTA) decisions setting the value of their rental properties at amounts millions of dollars higher than the three property owners claim they are worth. Attorney Mark Gillis — the plaintiff who sought those higher values (first from the Delaware County Board of Revision and then from the BTA) — relied on R.C. 5715.19, which at the time of Gillis's filings in 2023, allowed any individual to challenge a county auditor's valuation of taxable real-property parcels. That statutory provision, though, barred the filing of that kind of challenge unless the challenger who sought an increase in the valuation of the property could point to a recent sale of the property in an arm's-length transaction, and the challenger was also required under the statute to show that the sale price had been above a certain dollar amount and had been at least 10% higher than the property value set by the county auditor.

{¶2} According to the property owners, Gillis was required under the relevant statutory provision — R.C. 5715.19(A)(6) — to show as soon as he filed each of his valuation challenges that in each case a recent arm's-length sale had occurred and that each of the three sales met the dollar-amount and 10% thresholds set by the statute. No discovery process should have been allowed, and no further action should have taken place on the challenges filed by Gillis, according to the property owners, because Gillis could not immediately prove those things. Gillis, on the other hand, argued at the BTA that only through the BTA's discovery process could he uncover proof in each of the three cases that a qualifying recent arm's-length sale had taken place, and he asked for the chance to pursue that proof.

{¶3} The BTA sided with Gillis, allowing him to conduct discovery and to gather evidence that had not been available to him when he filed his three complaints or even when he had presented his cases to the county board of revision. Based on the evidence that Gillis gathered through the discovery process and then presented in each case at a BTA hearing, the BTA concluded that Gillis had indeed met his burden of proof under the statute, and the BTA voted to raise the taxable value for each of the apartment buildings by several million dollars.

{¶4} Now the property owners have appealed to our court, and they urge us to find that neither the county board of revision nor the BTA had jurisdiction to hear Gillis's valuation challenges because he could not prove, on the day he filed his three complaints, that the requisite arm's-length sales had occurred. No discovery process should have been permitted, and Gillis's complaints should have been immediately dismissed, the property owners claim, because R.C. 5715.19(A)(6) says that a complainant such as Gillis "shall not file" a valuation complaint unless that person can show that the required arm's-length sale has taken place.

{¶5} Because we agree with Gillis's and the BTA's view that the relevant statute did not require Gillis, on the day he filed his complaints, to have in hand proof that the requisite arm's-length sales had occurred, and because Gillis at each of the three BTA hearings was able to offer that necessary proof that he had gathered through the BTA's discovery process, we now affirm the BTA's decisions boosting the taxable value of the three apartment buildings in question.

The Key Facts

{¶6} In March 2023, Gillis filed complaints with the Delaware County Board of Revision (BOR) asking that the taxable values of three apartment buildings in Delaware County be increased for tax year 2022. The complaints alleged that the three rental properties — owned by appellants Northlake Summit LLC, Powell Grand Communities LLC, and Rushmore OH Partners LLC — had been sold within the previous three years in arm's-length transactions for amounts substantially greater than the values listed in the county's real-property tax records.

{¶7} The property owners promptly asked the BOR to dismiss those valuation complaints based on an alleged failure by Gillis to comply with the relevant statute's jurisdictional requirements. Though the BOR denied those dismissal motions, that board decided to leave the property values unchanged from the amounts set by the county auditor.

{¶8} Gillis then appealed to the BTA. There again, the three property owners, citing the jurisdictional requirements in R.C. 5715.19(A)(6), sought the dismissal of Gillis's three cases. The BTA denied the property owners' dismissal requests and allowed Gillis to conduct discovery in accordance with Ohio Administrative Code 5717-1-12 (authorizing depositions, interrogatories, the exchange of documents, and other avenues of discovery in BTA proceedings).

{¶9} After the discovery process wrapped up in each case, the BTA held hearings in two of the appeals. (In the third — involving the Rushmore property — the parties waived a hearing and submitted the matter for the BTA's consideration on a paper record and the parties' written arguments.) In October 2025, the BTA issued decisions increasing the value of all three properties for tax year 2022. The property owners, as permitted by R.C. 5717.04, have now appealed to our court.

<u>Our Standard of Review</u>

{¶10} A decision of the BTA must be affirmed by our court if that decision was "reasonable and lawful." R.C. 5717.04. We give no deference to the BTA's legal conclusions, but we review solely for an abuse of discretion that board's determinations about witness credibility and the weight to be given to the evidence. *Rover Pipeline, L.L.C. v. Harris*, 2025-Ohio-2806, ¶ 27.

<u>Gillis Was Not Required to Immediately Prove, When He Filed His Valuation Complaints at the BOR, That His Complaints Satisfied the Jurisdictional Requirements in R.C. 5715.19(A)(6)</u>

{¶11} The property owners argue first that the BTA — and the BOR before it — should have determined whether Gillis's complaints satisfied the jurisdictional requirements in R.C. 5715.19(A)(6) before allowing Gillis to engage in any discovery or present any evidence on the merits of his tax-valuation claims. We instead agree with the BTA that Gillis had no obligation to prove his allegations before he conducted discovery at the BTA level in his cases.

The Procedure Set by R.C. 5715.19

{¶12} Legislative changes to R.C. 5715.19 that took effect in 2022 imposed limits on so-called third-party complainants — like Gillis — who file requests asking a county BOR to increase the taxable value of someone else's real property. (The General Assembly has amended the statute three more times since 2022, but we focus today on the 2022 version because that was the one in effect when Gillis filed his three BOR complaints in 2023.)

{¶13} Under the 2022 version of R.C. 5715.19(A)(6), a third-party complainant "shall not file" a valuation-increase request unless the real property in question was — according to division (A)(6)(a) of the statute — "sold in an arm's length transaction" in which the sale price exceeded the county auditor's valuation of the property "by both ten per cent and the amount of the filing threshold determined under division (J)." (For tax year 2022 — the year at issue in Gillis's three BOR complaints — that division (J) amount was $500,000.) And an arm's-length transaction is described in R.C. 5713.03 as a "sale between a willing seller and a willing buyer within a reasonable length of time."

Gillis's Complaints and the Two Boards' Actions on Them

{¶14} In his complaint involving the apartment building owned by Northlake Summit, Gillis alleged that the property — then valued at roughly $24.9 million — had recently sold for $43.8 million. Gillis attached to that complaint a newspaper article describing the sale, and he attached, too, a report prepared by CoStar, a commercial real-estate information company.

{¶15} In his complaint involving the apartment building owned by Powell Grand Communities, Gillis — again citing what he claimed was a recent arm's-length sale of that property — sought an increase in the county auditor's valuation of the property from roughly $40.1 million to $70.7 million. Nothing was attached to that complaint.

{¶16} Finally, in his complaint involving the apartment building owned by Rushmore, Gillis alleged that the property — then valued at roughly $15.9 million — had recently sold for $26.1 million. Attached to Gillis's complaint in that case were a press release, a conveyance-fee statement, and a document indicating that a mortgage had been released.

{¶17} The allegations in each of the three complaints, if proven, would satisfy the requirements of R.C. 5715.19(A)(6) because each complaint alleged both an arm's-length sale and a sale price well above the percentage and dollar-amount increases in value spelled out in the statute.

{¶18} At hearings before the BOR on the complaints, Gillis presented no evidence. Only through the discovery process at the BTA did Gillis obtain purchase agreements and closing statements from the property owners, and he presented those documents, as well as appraisal reports and testimony from an expert witness, at hearings before the BTA. Although the three property owners argued at both the BOR and BTA that Gillis ought to have been required to prove from the outset that his complaints met the filing requirements set by R.C. 5715.19(A)(6), both boards waited and addressed those so-called jurisdictional requirements when they addressed the merits of Gillis's valuation-increase requests.

Nothing in the Statue Compelled Gillis to Prove His Three Complaints' Allegations Before He Conducted Discovery

{¶19} The three property owners argue here that Gillis's failure to prove immediately to the BOR that his complaints met R.C. 5715.19(A)(6)(a)'s arm's-length-sale and high-dollar-sale-price conditions should have prompted the BOR to dismiss Gillis's complaints without reaching the merits of them. Yet the statute does not specify when or how a complainant must show compliance with those conditions. In our view, the property owners' reading of the statute's language is inconsistent with the approach embraced by the Supreme Court of Ohio in cases involving challenges to real-property values.

{¶20} To be sure, the complainant "must affirmatively plead the jurisdictional facts." *Marysville Exempted Village School Dist. Bd. of Edn. v. Union Cty. Bd. of Revision*, 2013-Ohio-3077, ¶ 11, citing *Haskins v. Alcott & Horton*, 13 Ohio St. 210, 216 (1862) ("where a statute, upon certain conditions, confers a right, or gives a remedy, unknown to the common law, the party asserting the right, or availing himself of the remedy, must, in his pleadings, bring himself, or his case, clearly within the statute"). And those jurisdictional facts must exist "as of the time of filing." *Soyko Kulchystsky, LLC v. Cuyahoga Cty. Bd. of Revision*, 2014-Ohio-4511, ¶ 31 (addressing a complainant's obligation concerning conditions spelled out in R.C. 5715.19(A)(2)).

{¶21} Yet nothing in the statute or in Supreme Court decisions interpreting this or similar jurisdiction-limiting provisions suggests that the complainant must prove immediately that he or she has met those jurisdictional requirements. Rather, we conclude that — as the Supreme Court said in another real-property-valuation case — the complainant ought to be given the "opportunity *both* to assert *and* to prove the basis for its standing to maintain the complaint." *Diley Ridge Med. Ctr. v. Fairfield Cty. Bd. of Revision*, 2014-Ohio-5030, ¶ 24 (addressing a property owner's request for a reduction in the taxable value of the owner's own real property).

{¶22} Complainants whose tax-valuation challenges rest on the (A)(2) paragraph of R.C. 5715.19 — as opposed to the (A)(6) paragraph at issue in our case — must merely (as the (A)(2) provision says) "allege[]" certain facts, and the Supreme Court has explained that a complainant who has "indicat[ed] on the complaint" the necessary facts need do nothing more at the pleading stage in order to satisfy "the language of R.C. 5715.19(A)(2)." *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 2009-Ohio-5932, ¶ 19. *See also Glyptis v. Cuyahoga Cty. Bd. of Revision*, 2018-Ohio-1437, ¶ 7, 17 (where the complainant properly "alleged" one of the necessary circumstances listed in R.C. 5715.19(A)(2) and then later "offered sufficient evidence" to prove that allegation, the complainant complied with the statute's jurisdictional requirement).

{¶23} These and other decisions make clear that the Supreme Court, other Ohio appellate courts, and the BTA have for decades declined to interpret R.C. 5715.19 as requiring a complainant to prove the allegations in its complaint as soon as the complaint is filed. *See, e.g., Elkem Metals Co. v. Washington Cty. Bd. of Revision*, 81 Ohio St.3d 683, 686 (1998) (as long as a review of the complaint indicates that it "meets the jurisdictional requirements set forth by the statutes," the board of revision is "empowered to proceed to consider the evidence and determine the true value of the property"); *Snider Crossing LLC v. Warren Cty. Bd. of Revision*, 2025-Ohio-3189, ¶ 44 (12th Dist.) (a complainant "properly invoked jurisdiction by alleging facts that, if proven, would satisfy" R.C. 5715.19(A)(6)'s requirements, and those allegations can then be "tested . . . through discovery and hearings" to see if the "evidence ultimately confirm[s] them"); *Michel v. Erie Cty. Bd. of Revision*, BTA No. 2005-T-454, 2006 Ohio Tax LEXIS 311, *6 (Mar. 3, 2006) (once the complainant made the allegation, he "then had the obligation to establish that the casualty exception existed" and the BOR should have held a hearing to allow the complainant "an opportunity to establish the circumstances allowed by R.C. 5715.19(A)(2)").

The BTA Properly Permitted Gillis to Supplement the Record Through the BTA's Discovery Process

{¶24} We agree with the BTA, too, that Gillis, in his BTA appeal, was not limited to the record developed before the BOR. As the Twelfth District noted last year, a BOR "operates as an informal administrative body designed to provide accessible dispute resolution" in property-tax cases, and its proceedings are not governed by the Rules of Evidence. *Snider Crossing* at ¶ 52. The BTA, on the other hand, "conduct[s] comprehensive administrative appeals" and can address "more complex evidentiary questions." *Id*. at ¶ 53. And even though the BTA is not required to comply with the Rules of Evidence, those rules "may guide the BTA in conducting its hearings." *Dublin City School Dist. Bd. of Edn. v, Franklin Cty. Bd. of Revision*, 80 Ohio St.3d 450, 452 (1997). *See also Bd. of Edn. for Orange City School Dist. v. Cuyahoga Cty. Bd. of Revision*, 74 Ohio St.3d 415, 417 (1996) (even though "Evid.R. 101(A) does not mention administrative agencies as forums to which the Rules of Evidence apply," the rules may nevertheless guide the BTA in conducting its hearings).

{¶25} R.C. 5717.01 authorizes the BTA to "order the appeal to be heard on the record and the evidence certified to it by the county board of revision," but that same statutory provision also empowers the BTA to "order the hearing of additional evidence" and permits the BTA to "make such investigation concerning the appeal as it deems proper." And the Supreme Court tells us that the BTA "has discretion in admitting evidence," and "unless the BTA abuses its discretion, we will affirm its decision." *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision*, 2017-Ohio-7664, ¶ 11.

{¶26} The longstanding view in Ohio property-tax appeals is that parties may offer additional evidence before the BTA, within the limits of R.C. 5715.19(G). *See Bd. of Edn. of the Columbus City School Dist. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001).

R.C. 5715.19(G) requires a complainant to provide to the BOR "all information or evidence within the complainant's knowledge or possession that affects the real property that is the subject of the complaint." A complainant is then precluded from introducing additional evidence on appeal to the BTA unless the complainant "shows good cause for [his] failure to provide the information or evidence to the [BOR]." *Id.* If the complainant does show good cause for its failure to provide the information at the BOR level, the BTA may admit and consider that additional evidence. *Id.*

{¶27} Gillis was unable to obtain the purchase agreements and settlement statements for the sales of the properties during proceedings before the BOR. The property owners were unwilling to voluntarily turn those documents over to Gillis, and the BOR did not issue any orders directing the parties to comply with discovery requests. The record indicates that Gillis did not possess and could not obtain the evidence to prove the allegations in his complaint in the proceedings before the BOR.

{¶28} Before the BTA, though, Gillis, relying on Ohio Administrative Code 5717-1-12 — which permits BTA-level discovery via depositions, interrogatories, production of documents, entry onto land, and requests for admissions — gathered information and evidence that he had not been able to procure earlier. The BTA's authorization of those discovery efforts in Gillis's cases was consistent with well-accepted BTA practices. *See Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 2022-Ohio-4100, ¶ 23 (10th Dist.) (finding that the BTA did not abuse its discretion in admitting evidence of a purchase contract and settlement statement even where a party failed to comply with disclosure deadlines in Adm.Code 5717-1-07).

<u>Gillis Satisfied the Jurisdictional Requirements Set by R.C. 5715.19(A)(6)</u>

{¶29} Concluding as we do that the BTA properly permitted Gillis, through the BTA discovery process contemplated under Ohio Administrative Code 5717-1-12, to gather and then present evidence in the BTA appeal that had been unavailable to him when he filed his three complaints and when he presented his cases before the BOR, we readily conclude that the BTA acted reasonably and lawfully in siding with Gillis on the merits of his valuation complaints.

Gillis Met the Statute's Sale-Price Requirements

{¶30} Gillis presented purchase agreements, settlement statements, and testimony from an appraiser at the BTA hearings to demonstrate that the three apartment buildings had been transferred to new owners for amounts more than $500,000 above the values set by the county auditor for those properties at the time, and those transfer prices were all more than 10% higher than the properties' assessed values in the county auditor's records.

{¶31} With that evidence, Gillis demonstrated that his three valuation complaints met the sale-price requirements in R.C. 5715.19(A)(6)(a)(ii) at the time those complaints were filed.

{¶32} To be sure, the property owners objected to the admission of an appraiser's report and also to that person's testimony based on an alleged lack of firsthand knowledge about the property transfers in question. Yet the BTA ultimately concluded that the transfer prices for the properties provided more reliable evidence of value than the appraiser's opinions. As the Supreme Court has said, the BTA is permitted to make its own independent decision on the valuation of the property — *see Cincinnati Milacron Industries v. Brown Cty. Bd. of Revision*, 35 Ohio St.3d 32, 33 (1988) — and we find that the BTA did not err by allowing Gillis to present the appraiser's report and testimony.

The BTA Reasonably Concluded That the Properties' Sales Were Arm's-Length Transactions

{¶33} Finally, we see no basis for overturning the BTA's view that Gillis proved that the three apartment buildings were sold in arm's-length transactions. The "'initial burden on a party presenting evidence of a sale is not a heavy one, where the sale on its face appears to be recent and at arm's length.'" *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 2010-Ohio-1040, ¶ 14, quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 2008-Ohio-1473, ¶ 41. When a party meets its burden of presenting a prima facie case for using a sale price to determine the value of the property, the burden then rests with the other party "to refute the recency or arm's-length character of the sale." *Olentangy Local Schools* at ¶ 13.

{¶34} "When the BTA determines a value for a property, that valuation is a finding of fact." *Bd. of Edn. of the Columbus City School Dist.*, 90 Ohio St.3d at 565. "Any finding of fact by the BTA must be supported by the evidence" and the BTA must state "what evidence it considers relevant in reaching a value determination." *Id.* at 565–566. The BTA is vested with wide discretion in determining the weight to be given to evidence and the credibility of witnesses. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision*, 44 Ohio St.2d 13 (1975), paragraph three of the syllabus. "[I]f the record contains reliable and probative support for the BTA's determinations, this court will affirm them." *Olentangy Local Schools* at ¶ 15.

{¶35} The property owners maintain that any ownership transfers were not sales at all, let alone arm's-length sales. Instead, they claim, two of the transfers were "membership-entity sales," while the third was a "drop-down LLC sale." The property owners characterize these transactions as acquisitions of certain corporate assets rather than sales of real property.

{¶36} R.C. 5715.19(A)(6)(a)(i) does of course require the party seeking a change in value to show that the real property in question has been sold in an arm's-length transaction. And an arm's-length sale is characterized by three elements: (1) "'it is voluntary'" meaning that it has occurred "'without compulsion or duress,'" (2) it generally "'takes place in an open market,'" and (3) "'the parties act in their own self-interest.'" *Elyria City School Dist. Bd. of Edn. v. Ellis*, 2008-Ohio-4293, ¶ 8 (9th Dist.), quoting *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23 (1989), syllabus.

{¶37} The "best evidence" of the value of real property is "'an actual, recent sale of the property in an arm's-length transaction.'" *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 2017-Ohio-4415, ¶ 33, quoting *Conalco, Inc. v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. In *Columbus City Schools Bd. of Edn. v. Franklin Cty Bd. of Revision*, 2020-Ohio-353, ¶ 36 — which all parties in today's appeals have dubbed the *Palmer House* case — the Supreme Court of Ohio clarified that its prior decisions did not articulate "an iron rule that the sale of an entity may never, for purposes of invoking the sale-price presumption, be viewed as equivalent to a sale of the entity's real-estate asset." Instead, the court drew a distinction between, on the one hand, its prior decisions involving purchase contracts "for sales of corporate shares or partnership interests without explicit reference to an intent to sell and buy the real estate itself" and, on the other hand, the facts in the *Palmer House* case. *Id*. at ¶ 37.

{¶38} In *Palmer House*, the BTA was presented with a purchase and sale agreement for commercial real estate. *Id*. at ¶ 38. The parties' contract took "the classic form of a purchase agreement for commercial real estate by identifying as the subject matter of the transaction the specific real property along with categories of personal property appurtenant to the commercial operation of the real estate." *Id*. The Supreme Court concluded that the purchase and sale agreement was unlike those in that court's prior cases, that the agreement supported the BTA's findings that the sale "reflected the parties' intent to sell and purchase income-producing real estate," and that "the parties' transfer of corporate ownership constituted a contrivance for accomplishing the sale of commercial real estate." *Id*. at ¶ 39.

{¶39} The view of the property owners in today's case that the General Assembly intended to exclude entity transfers when it amended R.C. 5717.19 in 2022 is not supported by the statutory language. The *Snider Crossing* court held that the General Assembly — presumably aware of the Supreme Court of Ohio's ruling in *Palmer House* — could have, but chose not to, "exclude entity transfers from the definition of qualifying sales." *Snider Crossing*, 2025-Ohio-3189, at ¶ 84 (12th Dist.).

{¶40} The record here establishes that the transactions possess the characteristics of a qualifying sale as determined in *Palmer House*. The purchase and sale agreements for the Northlake Summit, Powell Grand, and Rushmore properties all begin with language that the seller owns the property and that the purchaser desires to purchase the property on the terms and conditions set forth in the agreements. The next section in the agreements states that the seller will convey 100% of its membership interests. Each of the purchasers' settlement statements list the real estate as the asset being transferred for the purchase price.

{¶41} Because the properties are operated as apartment complexes, the property owners contend that the transfers of the membership interests involved more than the transfers of real estate. In considering a transaction similar in nature to the transactions in this case, the *Palmer House* court determined that the real estate was generating rent income that was integral to the value of the real estate, yet because no other income was derived from the use of the real estate, there was no business value other than the value of the real estate itself. *Palmer House*, 2020-Ohio-353, at ¶ 42. The Supreme Court determined in that case that the transaction belonged "in the category of those sales of income-producing properties in which the total contract price constitutes a presumptive starting point for valuing the real estate, subject to reduction if the owner demonstrates the propriety of allocating some of the contract price to assets other than real property." *Id.*

{¶42} The property owners in today's case claim that the membership interests conveyed in the agreements included not only real property but also personal property and intangibles. In determining the taxable value of the property, the "BTA must decide not only whether a proffered sale price satisfies the criteria of recency and arm's-length character, but also what amount of the stated sale price pertains to the realty." *Olentangy Local Schools*, 2010-Ohio-1040, at ¶ 22. And "if the record clearly establishes that a portion of a sale price pertains to personal property," the BTA should "subtract that portion from the stated sale price to arrive at the amount of consideration paid for the realty." *Id*.

{¶43} The record in this case does not establish a basis for allocating a portion of the sale prices to any personal property that was allegedly transferred. The purchase and sale agreements state that the property owners desired to purchase the subject properties, and the sales of the properties were achieved via the owners' conveyance of 100% of the membership interests to the purchasers. The agreements do not "set forth a schedule of personal property that constituted part of the sale." *Id*. at ¶ 23. And the intangible property referred to in the agreements — including use of the apartment-complex name, phone numbers, and social media, as well as rights associated with what the agreements describe as "service contracts" — is not allocated any portion of the sale price. The sale prices listed on the settlement statements for the transfers of the properties are the values attributed to the properties by the BTA.

{¶44} "[W]hen real property is the subject of a sale[,] and the sale involves an incidental transfer of tangible or intangible personal property, the proponent of allocating a portion of the sale price to assets other than the realty 'bears an initial burden of showing the propriety of the allocation.'" *Id.* at ¶ 24, quoting *St. Bernard Self-Storage, L.L.C. v. Hamilton Cty. Bd. of Revision*, 2007-Ohio-5249, ¶ 14. Because the property owners did not present any evidence before the BTA, the board "had no duty to reduce the sale price on account of the transfer of personal property." *Olentangy Local Schools* at ¶ 24.

{¶45} The record supports the BTA's findings that the purchase and sale agreements and settlement statements are documentation of transfers of ownership interests in the properties. This evidence supports the conclusion that these entity transfers constitute "a contrivance for accomplishing the sale of commercial real estate." *Palmer House*, 2020-Ohio-353, at ¶ 39. And the property owners did not present any evidence to contradict this characterization of the transactions.

{¶46} We find that the BTA reasonably and lawfully determined that these entity transfers constituted qualifying sales under R.C. 5715.19(A)(6) and that the best evidence of the value of the properties is these sales.

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{¶47} For the reasons explained above, the decisions of the Board of Tax Appeals are affirmed. The costs in Case No. 25 CAH 11 0101 are to be paid by Appellant Northlake Summit LLC. The costs in Case No. 25 CAH 11 0102 are to be paid by Appellant Powell

Grand Communities LLC. And the costs in Case No. 26 CAH 02 0014 are to be paid by Appellant Rushmore OH Partners LLC.

By: Gormley, J.;

Baldwin, J. concurs, and

King, P.J. dissents.

King, P.J. dissents,

{¶48} I respectfully dissent from the majority's holding that a third-party complainant under the 2022 version of R.C. 5715.19(A)(6) "had no obligation to prove his allegations before he conducted discovery at the BTA level." Majority Opinion at ¶ 11.

{¶49} Our duty is to give force to the statute written by the General Assembly. The version of R.C. 5715.19(A)(6) in effect when these complaints were filed provided that a person who does not own or lease the property *"shall not file"* a complaint seeking an increase in value unless the property "sold in an arm's length transaction" before the tax lien date and the sale price exceeded the auditor's true value "by both ten per cent and the amount of the filing threshold determined under division (J)." For tax year 2022, that threshold was $500,000.

{¶50} "Shall not file" is a restriction on the act of commencing the case, and it is controlling of the outcome here. That section does not say merely that a third-party complainant must only "allege." It says, "shall not file." We are not free to treat those choices as interchangeable. *See Hulsmeyer v. Hospice of Southwest Ohio, Inc.,* 2014-Ohio-5511, ¶ 23, citing *Columbia Gas Transmission Corp. v. Levin,* 2008-Ohio-511, ¶ 19 ("[t]he court must give effect to the words used, making neither additions nor deletions from words chosen by the General Assembly"). That difference in language is meaningful.

{¶51} The majority avoids the import of the section's plain language by pointing to other sections and supporting precedent. But they are unavailing in the face of the plain language of R.C. 5715.19(A)(6). To begin, subsection (A)(2) and its precedent are distinguishable. Subsection (A)(2) only requires the complainant to "allege" certain facts. To that end, the Supreme Court held that indicating the necessary facts on the complaint form satisfies that language at the pleading stage. *Worthington City Schools Board of Education v. Franklin County Board of Revision*, 2009-Ohio-5932; *Glyptis v. Cuyahoga County Board of Revision*, 2018-Ohio-1437.

{¶52} The same is true of *Diley Ridge Medical Center v. Fairfield County Board of Revision*, 2014-Ohio-5030, ¶ 24, on which the majority relies for the "opportunity *both* to assert *and* to prove the basis for its standing to maintain the complaint." Majority Opinion at ¶ 21. *Diley Ridge* concerned an owner seeking a reduction in the value of its own property; it did not construe a third-party filing prohibition enacted years later. An owner's opportunity to prove standing is not the same as a third-party complainant's opportunity to file first and discover jurisdictional facts afterward.

{¶53} The majority next treats R.C. 5715.19(G) as a bridge over the statute's prohibition against third party filing. Majority Opinion at ¶ 26–28. Subsection (G) requires a complainant to give the BOR "all information or evidence within the complainant's knowledge or possession that affects the real property," and it limits new evidence at the BTA unless the complainant shows "good cause" for the omission. That is a rule about the record on *value*. It is not a grant of authority to supply, after the fact, the statutory jurisdictional predicate required by subsection (A)(6).

{¶54} Nor does the BTA's power to take additional evidence under R.C. 5717.01 and 5717.02, or under Ohio Adm.Code 5717-1-12, change the analysis. Those provisions assume a case the BTA has authority to hear the matter. They do not create that authority by authorizing a jurisdictional expedition. "The BTA is a creature of statute and as such has only the jurisdiction, power, and duties expressly provided by the General Assembly." *Ross v. Cuyahoga County Board of Revision*, 2018-Ohio-4746, ¶ 9, citing *Steward v. Evatt*, 143 Ohio St. 547 (1944), paragraph one of the syllabus. Discovery cannot confer subject matter jurisdiction that the complaint never properly invoked; rather, the right to discovery is dependent upon jurisdiction in the first instance.

{¶55} I concede that a third-party complainant is without subpoena power to obtain the closing documents, thus making it difficult to invoke the BOR's jurisdiction. But this is merely the consequence of the framework the General Assembly selected. That policy decision is not for us to second guess merely because it operates as a hardship to a third-party complainant.

{¶56} Jurisdictional conditions must exist "as of the time of filing." *Soyko Kulchystsky, LLC v. Cuyahoga County Board of Revision*, 2014-Ohio-4511, ¶ 31. The majority cites *Soyko* for the unremarkable proposition that the qualifying sale must have happened. Majority Opinion at ¶ 20. That is only half of the point. A third-party complainant does not overcome the statute's prohibition on filing merely because the sale may have happened. They must establish their right to proceed at the time of filing—an allegation is not enough under this legislation.

{¶57} Gillis alleged recent sales and attached secondary reporting, a newspaper article, in the Northlake Summit case. Majority Opinion at ¶ 14. He did not have the purchase agreements or settlement statements at the BOR stage. The majority states, without qualification, that Gillis "did not possess and could not obtain the evidence to prove the allegations in his complaint in the proceedings before the BOR." Majority Opinion at ¶ 27. That should have ended the matter. Instead, that tenuous showing became the reason that the BTA opened discovery.

{¶58} I would not adopt *Snider Crossing L.L.C. v. Warren County Board of Revision*, 2025-Ohio-3189 (12th Dist.), as the rule of this District. *Snider Crossing* held that a complainant "properly invoked jurisdiction by alleging facts that, if proven, would satisfy" subsection (A)(6), and that those allegations may then be tested "through discovery and hearings." *Id.* at ¶ 44; Majority Opinion at ¶ 23. The Twelfth District went further and treated the adequacy of the BOR record as "legally irrelevant to the ultimate jurisdictional determination." *Snider Crossing* at ¶ 63. In my view, for the "shall not file" language to be meaningful, a more exacting standard is required than what is required under "allege." Otherwise, you have to do, as here, get two administrative bodies deep before you know whether facts supporting jurisdiction exist.

{¶59} A third-party complaint under the 2022 version of R.C. 5715.19(A)(6) invokes the jurisdiction of the BOR only if two things are true. First, the complaint must allege a specific pre-lien arm's-length sale of the subject property — date, price, parties, parcel — that, if true, clears the ten percent and $500,000 thresholds. Second, the complainant must produce competent evidence of that sale at the BOR. If the showing is not made there, the BOR should dismiss. The BTA reviews that dismissal. It does not cure a failure to show jurisdiction was properly invoked by a third-party complainant by ordering the owner to produce the missing—but necessary—evidence that would have made the third party's complaint proper.

{¶60} Nothing in this view rejects *Palmer House*. *See* Majority Opinion at ¶ 37-38. An entity transfer may be a sale of the realty when the documents show a contrivance for conveying the real estate. *Palmer House,* 2020-Ohio-353, ¶ 39. The question here is not whether these deals, once produced, look like the deal in *Palmer House*. The question is whether a third-party complainant may allege a qualifying sale, without evidence that reasonably establishes a qualifying sale, yet invoke the BOR's jurisdiction, and then at the BTA, use the R.C. 5715.19(G) exception to permit discovery to see whether the sale gives the BOR jurisdiction and whether the closing documents prove a *Palmer House* contrivance. I would hold that the third-party complainant may not. Further, on the record before us, a newspaper account of a transaction did not reasonably establish it was a qualifying sale and without that showing, the BOR never acquired jurisdiction.

{¶61} Because Gillis did not establish the R.C. 5715.19(A)(6) exception with competent evidence before the BOR, that board lacked authority to revalue the parcels, and the BTA lacked authority to cure the defect through discovery. I would reverse the decisions of the BTA, and I would reinstate the auditor values retained by the Delaware County Board of Revision. I therefore dissent.