

David Leach,)	CASE NOS. 96-M-1651
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Hamilton County Board)	
of Revision and the)	
Hamilton County Auditor,)	
)	
Appellees.)	
)	

APPEARANCES:

For the Appellant-	David Leach, <u>Pro Se</u> P.O. Box 2814 Cincinnati, OH 45201
For the County- Appellees	Joseph T. Deters Hamilton County Prosecuting Attorney By: Thomas J. Scheve Assistant Prosecuting Attorney 125 East Court Street, Suite 300 Cincinnati, OH 45202

Entered May 22, 1998

Mr. Johnson, Ms. Jackson and Mr. Manoranjan concur.

This cause and matter comes to be considered by the Board of Tax Appeals upon a Notice of Appeal filed by appellant herein under date of December 5, 1996, from a decision, dated November 6, 1996, of the Hamilton County Board of Revision ("BOR"), appellee herein.

The subject property is located in the Cincinnati taxing district of Hamilton County, Ohio, and further identified as Parcel No. 193-5-160.

The Hamilton County Auditor found the true and taxable value of the subject property for tax year 1995 to be as follows:

Parcel No. 193-5-160

	TRUE VALUE	TAXABLE VALUE
Land	\$ 900.00	\$ 320.00
Building	\$ -0-	\$ -0-
Total	\$ 900.00	\$ 320.00

Upon consideration of the complaint filed by the appellant, the BOR reduced the value of the subject property for tax year 1995 as follows:

Parcel No. 193-5-160

	TRUE VALUE	TAXABLE VALUE
Land	\$ 760.00	\$ 270.00
Building	\$ -0-	\$ -0-
Total	\$ 760.00	\$ 270.00

The appellant believes that his property remains overvalued. In his Notice of Appeal, the appellant alleges that the correct value for the parcel for tax year 1995 is as follows:

Parcel No. 193-5-160

	TRUE VALUE	TAXABLE VALUE
Land	\$ 30.00	\$ 10.00
Building	\$ -0-	\$ -0-
Total	\$ 30.00	\$ 10.00

This appeal is one of approximately 90 appeals originally filed by the appellant, David Leach, contesting values assigned by the BOR to properties owned by him. The properties owned by Mr. Leach were obtained through sheriff's sales conducted pursuant to R.C. 323.25. That statute authorizes the county treasurer to

institute foreclosure proceedings when taxes charged against the tax duplicate are certified as delinquent by a county auditor, as prescribed in R.C. 5721.011. Upon successful bid and purchase, Mr. Leach titled some of the properties in his name individually and some in the name of "Cincinnati American Real Estate Co." or "C.A.R.E., Co."

After the appeals were filed with this Board, appellees' representative filed motions challenging this Board's jurisdiction. In Leach v. Hamilton Cty. Bd. of Revision (June 13, 1997), B.T.A. Nos. 96-M-1668 through 1679, 96-M-1681 through 1685, 96-M-1689 through 1691, 96-M-1693 through 96-M-1695, 96-M-1698 through 1702, 96-M-1701, 96-M-1708, and 96-M-1738, unreported, this Board agreed with the appellees that certain of the appeals were not filed within the thirty day period provided for in R.C. 5717.01. Thereafter, in Leach v. Hamilton Cty. Bd. of Revision (Aug. 15, 1997), B.T.A. Nos. 96-M-1650, 96-M-1652, 96-M-1655 through 1660, 96-M-1662, 96-M-1664 through 1667, 96-M-1680, 96-M-1687, 96-M-1688, 96-M-1692, 96-M-1696, 96-M-1697, 96-M-1703, 96-M-1704, 96-M-1706, 96-M-1709, 96-M-1718 through 1722, 96-M-1724 through 96-M-1733, 96-M-1735 through 96-M-1737, 96-M-1739 and 96-M-1740, unreported, this Board found the complaints filed on behalf of those properties listed in the name of "C.A.R.E. Co." to be defective under Buckeye Foods v. Cuyahoga Cty. Bd. of Revision (1997), 78 Ohio St.3d 459. Therefore, the appeals relating to such complaints were dismissed.

Remaining for this Board's consideration are appeals which were filed within jurisdictional time limitations and which contest value of properties, such as the subject, titled in Mr. Leach's

name. While merit hearings were not held on these appeals, appellant presented factual testimony relating to all appeals at the hearing held for purposes of taking evidence and testimony relating to the jurisdictional issues. The parties also entered the following "Stipulation" into the record at that time. The Stipulation, which the Board considers to be a statement regarding the testimony which would have been presented had an evidentiary hearing been held, provides the following:

"The parties agree that in all of the cases before the BTA the issues are the following:

"1) The Appellant believes that the value of each parcel of property which sold at sheriff's sale is an indication of worth and should be considered.

"2) The Appellant believes that his testimony was more credible than the Auditor's appraiser.

"3) The Appellant believes that his claimed opinion of value should apply to the year for which he filed a complaint in addition to preceding years in which the Appellant owned the property.

"4) The parties agree that they will waive any further hearing or testimony before the BTA, but that each side may submit written arguments as to why the BTA should accept its position."

The appellant also appeared before the BOR and presented his opinion of value on this and other remaining properties. Mr. Leach's presentation was similar on each and every property whose value he contested. Mr. Leach testified that he purchased each property at a tax sale for a minimal amount, sometimes as little as

one dollar. It was Mr. Leach's opinion that his bid at that sheriff's sale should be accepted as value for ad valorem tax purposes. Mr. Leach also testified that he held a public auction at the Union Terminal June 21 and 22, 1996, where he offered 68 of the contested properties for sale. Mr. Leach then stated that he received no bids on many of the properties. On the 23 properties he did receive offers on, none had closed by the time of the BOR's hearings. While Mr. Leach did not disclose the bids accepted at auction, he did state that, in all cases, the bids were less than the values assigned by the Auditor. Other than the testimony reflected herein, Mr. Leach provided no other evidence of value, except to suggest that his requested value of \$30.00 was greater than either the price paid to purchase the properties at sheriff's sale or the bids accepted at his auction.

The Hamilton County Auditor also presented evidence to the BOR through Mr. Edward T. Cole, a staff appraiser, who gave general information regarding the size of each individual parcel under consideration, its location and topography. Mr. Cole then presented what he believed to be recent sales which were comparable to the property under complaint. In most cases, including the subject, the BOR reduced value. The BOR many times considered Mr. Cole's comparables and determined a value less than that suggested by the Auditor's witness.

The matter is considered by the Board of Tax Appeals upon the Notice of Appeal, the Statutory Transcript certified to this Board by the Hamilton County Auditor, the evidence presented by way

of hearing, the Stipulation, and the written argument presented by the parties through brief.

The subject property is a 25 foot by 102 foot vacant lot. While Mr. Leach alleged that many of his lots do not meet the minimum size required by building code to build a structure, this lot at one time had been improved with a family residence. According to Mr. Leach, the foundation had slipped, the owners abandoned the property, and the City of Cincinnati razed the crumbling structure, all before he purchased the lot at the sheriff's sale. Mr. Leach questioned whether another residence could be built because of the topography of the land, which "fell off in the back" and may not be stable enough to withstand a building's weight. No other evidence of value was presented by Mr. Leach, except to ask, once again, for a "minimal" value of \$30.00.

The Auditor's appraiser compared the subject to four vacant lots which had sold in 1993. Two were level, one rolling, and one part steep. The sale prices ranged from \$.20 per square foot to \$.38 per square foot. While Mr. Cole indicated that the most similar lot, one approximately three doors away, sold for \$1,000.00 or \$.38 per square foot, the BOR reduced value to \$.30 per square foot or \$760.00, based upon Mr. Leach's claim that the subject's terrain was not as level as the comparable's.

In making a determination as to value, this Board first acknowledges the standard by which we fulfill our duties. The Supreme Court has made it clear that there exists no presumption that the values found by a county board of revision are correct. Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision (1994), 68

Ohio St.3d 336; Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision (1994), 68 Ohio St.3d 493. Nevertheless, an appellant has the burden of presenting evidence in support of the value which it has asserted. Once competent and probative evidence of value has been presented, then the other parties to the appeal have the burden of providing evidence which rebuts that of the appellant. Springfield Local Bd. of Edn., supra; Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision(1988), 37 Ohio St.3d 318.

The auditor is the assessor of all land within the county and must assess that real estate "at its true value in money." R.C. 5713.01. In interpreting the meaning of "true value", the Supreme Court has determined that the best evidence of a property's fair market value or "true value in money" for tax purposes is that amount for which the property would sell on the open market between willing parties. State, ex rel. Park Investment Co. v. Bd. of Tax Appeals (1964), 175 Ohio St. 410; In re Estate of Sears (1961), 172 Ohio St. 443; Conalco v. Bd. of Revision (1977), 50 Ohio St.2d 129.

A legislative definition of "true value" appears in R.C. 5713.03 which provides, in relevant part:

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

(Emphasis Added)

In the present matter, Mr. Leach first claims that the amount he paid for the property at a sheriff's delinquent tax sale should be accepted as the property's value. We first note that Mr. Leach admitted before the BOR that he has owned many of these properties for years and has previously contested their value for an earlier triennial period. Given the length of ownership, we question whether his purchase price could be considered "recent" for purposes of R.C. 5713.03. However, such a finding is unnecessary, because both statute and case law dictate that prices paid at sheriff's sales are not indicative of a property's value for tax purposes.

R.C. 5713.04 provides, in pertinent part:

"Each separate parcel of real property shall be valued at its taxable value *** . The price for which such real property would sell at auction or forced sale shall not be taken as the criterion of its value "

(Emphasis Added)

The use of the price obtained at a sheriff's sale or other forced sale has been consistently rejected as evidence of a property's true value. HAP Enterprises v. Cuyahoga Cty. Bd. of Revision (May 30, 1991) Cuyahoga App. Nos. 58678 and 58679, unreported; Liberty-Lincoln Management Co., Inc. v. Cuyahoga Cty. Bd. of Revision (Jul. 22, 1988), B.T.A. No. 87-E-706, unreported; Plummer v. Morrow Cty. Bd. of Revision (Apr. 1, 1988), B.T.A. No. 87-H-447, unreported. Sheriff's sales for delinquent taxes are processed in a manner similar to mortgage lien foreclosures. R.C.

323.25. Therefore, we must conclude that purchase prices paid as a result of delinquent tax sales do not constitute evidence of value.

While "forced sales" of real property have been invalid for purposes of considering true value, not all auctions of real property have been disregarded. In Walters v. Knox Cty. Bd. of Revision (1989), 47 Ohio St.3d 23, the Supreme Court accepted the price obtained at the auction of five vacant lots when it found that the auction met the essential elements of an arm's length sale:

" *** In sum, an arm's-length sale is characterized by these 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."

Mr. Leach argues that he attempted to auction many of the properties and failed to receive any bids. It appears to be appellant's argument that a public auction without a bid evidences a property without value. However, Mr. Leach's reliance upon the fact that he has received no bid is misplaced. The test upon which Mr. Leach relies is one for an arm's length sale. Without a sale, this Board can make no judgment regarding market conditions, whether either the buyer or seller were forced to contract, or whether the parties were acting in their own self interest. Therefore, this Board must turn to other evidence to determine value. Ratner v. Stark Cty. Bd. of Revision (1986), 23 Ohio St.3d 59; Consolidated Aluminum Corp. v. Bd. of Revision (1981), 66 Ohio St.2d 410.

In this regard, Mr. Leach has failed to present any other competent or probative evidence of value. We acknowledge that Mr. Leach may present his own opinion of value. Amsdell v. Cuyahoga Cty. Bd. of Revision (1994), 69 Ohio St.3d 572. However, that opinion was not presented with any independent corroborative information. Without some other corroborative evidence, this Board is unable to place any weight upon Mr. Leach's opinion.

We also find it necessary to address Mr. Leach's claim that the Auditor's witness offered perjured testimony before the BOR. The testimony presented by the Auditor's witness appears to this Board to be the witness' best recollection of the facts upon which his opinion of value was based. Perjury is a criminal offense, requiring specific elements and mens rea. R.C. 2921.11. The Board has no jurisdiction to consider such matters. See. R.C. 5703.02. In the civil arena, not all testimony given under oath turns out to be factually correct. It is the responsibility of the opposing party to impeach the credibility of a witness by providing competent evidence which causes the trier of fact to disregard the competing testimony. See Evid. R. 607. In this regard, it is the duty of this Board to make relevant factual findings, based upon competent and probative evidence within the record. Cardinal Federal S. & L. Assn. v. Bd. of Revision (1975), 44 Ohio St.2d 13; Wynwood Apartments, Inc. v. Bd. of Revision (1979), 59 Ohio St.2d 34.

It is important to note the number of properties Mr. Cole was required to research and present to the BOR as well as the number of hearings the BOR held within a very short period. When

considering the preparation which must have been undertaken regarding these properties, all of which were vacant and some of which were extremely small, it appears to this Board that appellant's examples of perjured testimony are, more likely, merely the witness' failure of recollection. We further find the BOR had sufficient competent, probative, and factually accurate evidence before it to determine value. Moreover, while the appellant may have brought forth an instance or two when individual BOR members may have made statements which later appear not be factually correct, we remind the appellant that the BOR members are not without some bias, as the Supreme Court has held in R.R.Z. Associates v. Cuyahoga Cty. Bd. of Revision (1988), 38 Ohio St.3d 198:

"While the board of revision is a deciding tribunal, it is not a truly impartial tribunal in the sense that a trial court or the BTA is. The board of revision is composed of the county auditor, who establishes the initial true value of property, the county treasurer, who collects taxes based upon the true value, and the president of the board of county commissioners, which operates county government."

As the BOR members are not without some interest in the matter, it is incumbent for the appellant to provide evidence which rebuts the BOR's findings. This the appellant has failed to do. Merely indicating disagreement with statements made by the BOR members is not sufficient.

Finally, Mr. Leach claims that the values determined by this Board should apply to any year in which the appellant owned the property. Once again, Mr. Leach misinterprets the tax laws.

"A county board of revision may consider a claim to decrease valuation only where the claimant has complied with R.C. 5715.13 and 5715.19. *** " Cardinal Federal S. & L. Assn., supra. R.C. 5715.19 requires that a complaint contesting a value determination for the current tax year must be filed on or before the thirty-first day of March of the ensuing tax year. When Mr. Leach filed this complaint in February of 1996, he contested the value assessed for 1995. A valuation contest for any other year would not have met the statutory requirement. Wortman v. Licking Cty. Bd. of Revision (Aug. 13, 1993), B.T.A. No. 92-M-1040, unreported; Big Walnut, Inc. v. Franklin Cty. Bd. of Revision (Oct. 30, 1984), B.T.A. No. 82-A-1082, unreported.

Upon consideration of the existing record and the applicable law, the Board of Tax Appeals finds that appellant has failed to carry his burden. Moreover, this Board finds that there is sufficient competent and probative evidence of value within the record, and therefore determines that the value of the subject property as of January 1, 1995 was:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 760.00	\$ 270.00
Building	\$ -0-	\$ -0-
Total	\$ 760.00	\$ 270.00

It is the order of the Board of Tax Appeals that the Auditor of Hamilton County list and assess the subject real property in conformity with this decision and order. It is further

ordered that this value be carried forward in accordance with the
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