

**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

JAMES E. POLIFKA,)	
)	
Appellant,)	CASE NO. 02R-57
)	
vs.)	DOCKET ENTRY
)	AND ORDER
SARPY COUNTY BOARD OF)	DISMISSING APPEAL
EQUALIZATION,)	AT THE CLOSE OF
)	THE TAXPAYER'S CASE
Appellee.)	

The Nebraska Tax Equalization and Review Commission ("the Commission") called the above-captioned case for a hearing on the merits of the appeal on the 2nd day of June, 2003. The hearing was held in the City of Lincoln, Lancaster County, Nebraska, pursuant to a Notice of Hearing issued the 27th day of February, 2003. Commissioners Hans, Lore, Wickersham, and Reynolds heard the appeal. Commissioner Reynolds, Chair, presided at the hearing.

James E. Polifka ("the Taxpayer") appeared personally at the hearing. The Sarpy County Board of Equalization ("the Board") appeared through Gretchen L. McGill, Deputy Sarpy County Attorney. The Commission made certain documents a part of the record pursuant to Neb. Rev. Stat. §77-5016(5) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9). The Commission also afforded each of the parties the opportunity to present evidence and argument pursuant to Neb. Rev. Stat. §77-5015 (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §8). Each Party was also afforded the opportunity to cross-examine witnesses of

the opposing party as required by Neb. Rev. Stat. §77-5016 (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9).

Neb. Rev. Stat. §77-5018 (Cum. Supp. 2002) requires that every final decision and order entered by the Commission which is adverse to a party be stated in writing or on the record and be accompanied by findings of fact and conclusions of law. The Commission received, heard and considered the exhibits, evidence and argument. Thereafter it entered its Findings of Fact, Conclusions of Law, and a Final Order on the merits of the appeal on the record. Those matters, in substance, are set forth below:

**I.
STANDARD OF REVIEW**

The Taxpayer, in order to prevail, is required to demonstrate by clear and convincing evidence that (1) the decision of the Board was incorrect, and (2) that the decision of the Board was unreasonable and arbitrary. *Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9)*. The Supreme Court has determined that the "unreasonable or arbitrary" standard requires clear and convincing evidence that the Board either (1) failed to faithfully perform its official duties; or (2) that the Board failed to act upon sufficient competent evidence in making its decision. *Garvey Elevators v. Adams County Bd.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). The Taxpayer, once this initial burden has been

satisfied, must then demonstrate by clear and convincing evidence that the value as determined by the County was unreasonable. *Garvey Elevators, supra*, 136, 523-524 (2001).

**II.
FINDINGS OF FACT**

From the record, the Commission finds and determines as follows:

**A.
PROCEDURAL FINDINGS**

1. The Taxpayer is the owner of record of certain residential real property located in the City of Papillion, Sarpy County, Nebraska ("the subject property").
2. The Sarpy County Assessor ("the Assessor") proposed valuing the subject property in the amount of \$172,667 for purposes of taxation as of January 1, 2002 ("the assessment date"). (E1:2).
3. The Taxpayer timely filed a protest of the proposed valuation and requested that the subject property be valued in the amount of \$168,530. (E1:2).
4. The protest alleged that the improvement component of the subject property was not equalized with comparable property. (E1:2).
5. The Board denied the protest. (E1:1).

6. Thereafter, the Taxpayer timely filed an appeal of the Board's decision to the Commission. (Appeal Form).
7. The Commission served a Notice in Lieu of Summons on the Board on September 9, 2002. The Board timely filed an Answer on September 24, 2002.
8. The Commission issued an Order for Hearing and Notice of Hearing on February 27, 2003. The Notice set the matter for a hearing on the merits of the appeal for June 2, 2003.
9. The value of the land component of the subject property, \$26,000, was not protested by the Taxpayer for tax year 2002.
10. The only issue before the Commission is the equalized value of the improvement component of the subject property.
(E1:2).
11. The Board moved to dismiss the appeal at the close of the Taxpayer's case-in-chief for failure to prove a prima facie case.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The subject property is a tract of land approximately 7,734 square feet in size. (E3:1). The tract of land is legally described as Lot 200, Hickory Hill II Addition, City of Papillion, Sarpy County, Nebraska. (E3:1).

2. The tract of land is improved with a single-family residence. The residence is a two-story home built in 1996. (E3:4). The home has 2,293 square feet of above-grade finished living area. (E3:5). The home also has an unfinished basement which is approximately 1,123 square feet in size. (E3:5).
3. The "Quality of Construction" for the home is "Average +" and the Condition is "Average." (E3:4).
4. The home was valued using the Cost Approach for tax year 2002. (E3:5). The Replacement Cost New of the improvements was \$160,237. (E3:5). The Assessor attributed accrued depreciation of 11% to the improvements, for a Replacement Cost New Less Depreciation of \$143,167. (E3:5). The Assessor also attributed "Lump Sums SITE VALUE" of \$3,500 for a Replacement Cost New Less Depreciation for all improvements of \$146,667. (E3:5). The value of the land component in the amount of \$26,000 was added to that total for a total assessed value of \$172,667. (E3:5).
5. The Taxpayer requested an assessed value for the improvements in the amount of \$142,530, or \$4,137 less than the amount determined by the Assessor and adopted by the Board. (E1:2). The difference between the two amounts totals less than 3%. [$\$146,667 - \$142,530 = \$4,137 \div \$146,667 = 2.9\%$.]

6. The Taxpayer offered 15 single-family residential properties in support of his allegation that the assessed value of his improvements were not equalized with "comparable" properties. (E2:3).
7. The Taxpayer prepared a spreadsheet based on documents which he obtained from the Assessor's Office. These documents are found at Exhibit 2, pages 4 through 35.
8. "Comparable properties" share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 98. When using "comparables" to determine value, similarities and differences between the subject property and the comparables must be recognized. *Property Assessment Valuation*, 2nd Ed., 1996, p.103.
9. Differences between the subject and the "comparables" are accounted for through the use of adjustments to the sales price or assessed values of the "comparables."
10. Most adjustments are for physical characteristics. *Property Assessment Valuation*, 2nd Ed., 1996, p.105. "Financing terms, market conditions, location, and physical characteristics are items that must be considered when making adjustments . . ." *Property Assessment Valuation*, 2nd Ed., 1996, p. 98.

11. "The adjustment process is an analysis designed to show what the comparable property would have sold for if these differences were eliminated. The sale price of the comparable property is adjusted to account for as many of its differences from the subject property as possible. In adjusting the sale price of the comparable, lump sum dollar amounts or percentages are customarily employed.

Adjustments are always applied to the sale price of the comparable property, not to the subject property. If the sold property is inferior in some respect to the subject property, the sale price is increased by a dollar amount or percentage. If the sold property is superior in some respect, the sale price is decreased. Applying the adjustments to the sale price of the comparable property provides a value indication for the subject property."

Property Assessment Valuation, 2nd Ed., IAAO, 1996, p. 76.

12. Three of the "comparables" offered by the Taxpayer are located in the "Summerfield Replat." (E2:12; E2:14; E2:20).

The Taxpayer's property is located in a different neighborhood, Hickory Hills II. (E3:1).

13. "A neighborhood may be defined as an area of complementary land uses in which all properties are similarly influenced by the four forces affecting property value: environmental

(physical), governmental, social, and economic forces.

Property Assessment Valuation, 2nd Ed., IAAO, 1996, p. 54.

14. Nothing in the record explains the differences, if any, in the four factors influencing property values between the Hickory Hills II neighborhood, and the Summerfield neighborhood. In the absence of this evidence, the Commission cannot conclude that the two neighborhoods are "comparable."
15. The Taxpayer's remaining twelve "comparables" were built between 1986 and 1995. Eleven of the fifteen comparables were built in 1990 or earlier. The subject property improvements were built in 1996. No adjustment was made to any of these eleven comparables to account for the differences in age. These properties, which were at least six years older than the subject property, cannot be considered truly comparable to the subject property.
16. Of the three remaining properties offered by the Taxpayer, two were built in 1992. Again, there were no adjustments to account for differences in age between the subject property and these two properties.
17. The one remaining property, built in 1995 according to the spreadsheet (E2:3), was actually built in 1991. (E2:10).
18. Two of the properties offered by the Taxpayer as "comparables" have at least a partially finished basement.

(E2:3). However, the Taxpayer offered no adjustments to account for this difference between the comparable properties and the subject property.

19. The properties offered as "comparables" by the Taxpayer, in the absence of evidence concerning adjustments for differences in age and amenities, cannot be considered truly comparable to the subject property.
20. The Taxpayer adduced no evidence to establish that the decision of the Board was incorrect, unreasonable or arbitrary.

**III.
CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.
2. The Commission is required to affirm the decision of the County unless evidence is adduced establishing that the action of the County was incorrect, unreasonable or arbitrary. *Neb. Rev. Stat. §77-5016(7) (Cum. Supp.2002, as amended by 2003 Neb. Laws, L.B. 291, §9)*. The Nebraska Supreme Court, in considering similar language, has held that "There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence

to justify its action. That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence on appeal to the contrary. From that point on, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board." *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).

3. The Supreme Court has also held that "In an appeal to the county board of equalization or to [the Tax Equalization and Review Commission] and from the [Commission] to this court, the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment." *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).

4. "It is well established that the value of the opinion of an expert witness is no stronger than the facts upon which it is based." *Bottorf v. Clay Cty. Bd. Of Equal.*, 7 Neb. App. 162, 167, 580 N.W.2d 561, 565 (1998).
5. "An owner who is familiar with his property and knows its worth is permitted to testify as to its value." *U. S. Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).
6. The appraisal of real estate is not an exact science. *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N. W. 2d 872, 874 (1977).
7. "Comparing assessed values of other properties with the subject property to determine actual value has the same inherent weakness as comparing sales of other properties with the subject property. The properties must be truly comparable." *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998).
8. A Taxpayer, who offered no evidence that the subject property was valued in excess of its actual value and who only produced evidence that was aimed at discrediting valuation methods utilized by county assessor, fails to meet the burden of proving that value of his or her property was not fairly and proportionately equalized or that valuation

placed upon her property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

9. "Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that no one part is compelled to pay a disproportionate share of the tax. . . . If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. However, the burden is on the taxpayer to show by clear and convincing evidence that the valuation placed upon the taxpayer's property when compared with valuation placed on other similar property is grossly excessive." *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).
10. "Based upon the applicable law, the Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary." *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998).

**IV.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the Board's motion to dismiss be, and hereby is, granted.
2. That therefore the Taxpayer's residential real property legally described as Lot 200, Hickory Hills II Addition, City of Papillion, Sarpy County, Nebraska, shall be valued as follows for tax year 2002, as determined by the Sarpy County Board of Equalization:

Land	\$ 26,000
Improvements	\$146,667
Total	\$172,667
3. That any request for relief by any party not specifically granted by this order is denied.
4. That this decision, if no appeal is filed, shall be certified to the Sarpy County Treasurer, and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9).
5. That this decision shall only be applicable to tax year 2002.
6. That each party is to bear its own costs in this matter.

IT IS SO ORDERED.

I certify that Commissioner Lore made and entered the above and foregoing Findings and Orders in this appeal on the 2nd day of June, 2003. The same were approved and confirmed by Commissioners Hans and Wickersham, and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Cum. Supp. 2002).

Signed and sealed this 2nd day of June, 2003.

Mark P. Reynolds, Chair