

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

FREED'S FINE FURNISHINGS, INC., A Nebraska Corporation,	)	CASE NO.		
	)	02R-113	02R-114	02R-115
Appellant,	)	02R-116	02R-117	02R-118
	)	02R-119	02R-120	02R-121
vs.	)	02R-122	02R-123	02R-124
)			
DAWES COUNTY BOARD OF EQUALIZATION,	)	FINDINGS AND ORDERS		
)			
Appellee.)			

Filed August 27, 2003

Appearances:

For the Appellant: Mr. Dick Johnson, President
Freed's Fine Furnishings
13525 Camino del Sol
Sun City West, AZ

For the Appellee: Dennis D. King, Esq.
Special Appointed Counsel
Smith, King & Freudenberg, P.C.
P.O. Box 302
Gordon, NE 69337

Before: Commissioners Lore, Wickersham and Reynolds.

Reynolds, Chairman, for the Commission.

SUMMARY OF DECISION

The Commission affirms the Dawes County Board of Equalization's decisions to deny the Taxpayer's protests in Case Numbers 02R-115, 02R-117 and 02R-118. The Commission vacates and reverses the Board's decisions in the remaining appeals.

NATURE OF THE CASE

Freed's Fine Furnishings, Inc. ("the Taxpayer"), owns 47 vacant lots in the City of Chadron, Dawes County, Nebraska. The lots are held for development as single-family residential properties. The Dawes County Assessor ("the Assessor") determined that the actual or fair market value of the individual lots ranged from \$1,040 to \$8,250. (E37 - E48). The Taxpayer filed protests with the Dawes County Board of Equalization ("the Board") alleging the Assessor's proposed values exceeded actual or fair market value. (E37 - E48). The Taxpayer requested that the proposed 2002 valuations be reduced. (E37 - E48). The Board denied the protests as to each protest, except for the protest filed in Case Number 02R-119. The Board granted the Taxpayer some relief for lot values in that case. The Board increased the lot values in Case Numbers 02R-123 and 02R-124 from \$1,375 to \$5,400 each. The Taxpayer appeals from each of the Board's decisions.

I. EVIDENCE BEFORE THE COMMISSION

The Commission took notice of the Case File for each appeal as authorized by Neb. Rev. Stat. §77-5016(5) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9) without objection. The Commission also received Exhibits 13 - 15 and 17 - 49. The Commission sustained objections concerning the receipt of

Exhibits 1 - 12 and 16. The Commission also heard and considered the testimony of the witnesses and the argument of counsel.

II. ISSUES BEFORE THE COMMISSION

State law provides that the Commission's jurisdiction is limited to those questions raised before the County Board of Equalization and to those issues sufficiently related in content and context to be deemed the same question at both levels. Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9). See also *Arcadian Fertilizer v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 505, 583 N.W.2d 353, 357 (1998). The only issue before the Commission is the Taxpayer's allegations that each of the vacant parcels of residential real property are valued in excess of actual or fair market value.

III. 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" element 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).

IV. FINDINGS OF FACT

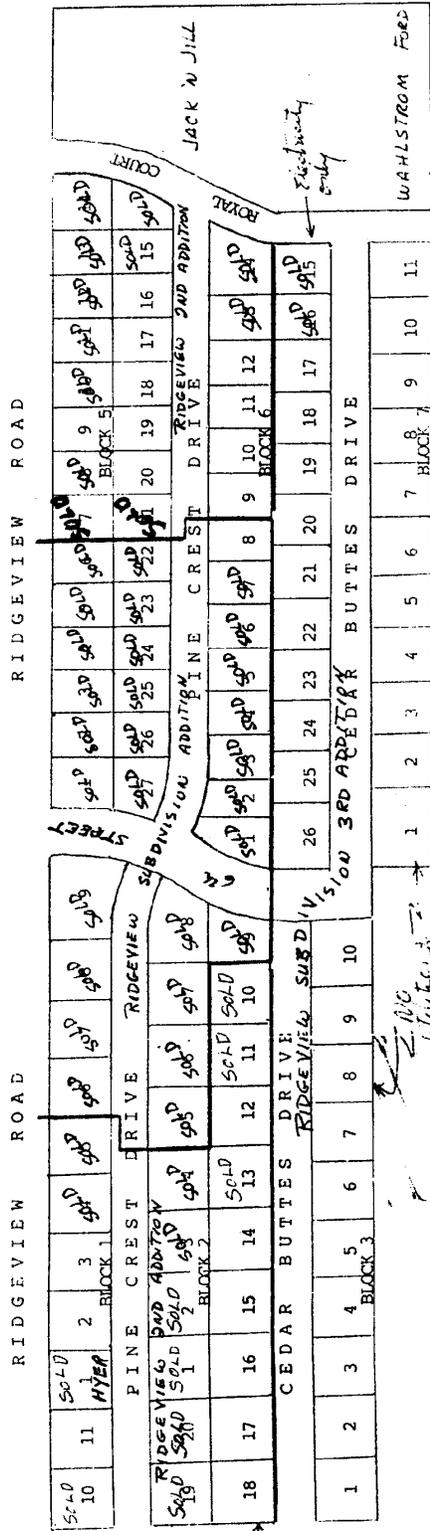
The Commission, in determining cases, is bound to consider only that evidence which has been made a part of the record before it. No other information or evidence may be considered. Neb. Rev. Stat. §77-5016(3) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9). The Commission may, however, evaluate the evidence presented utilizing its experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016(5) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9).

The Commission, from the pleadings and the evidence contained in the record before it, finds and determines as follows:

A.
PROCEDURAL FINDINGS

1. The Taxpayer is the owner of record of 47 vacant lots in the Ridgeview Addition to the City of Chadron, Dawes County, Nebraska ("the subject properties"). The lots are held for development as single-family residences. (The plat map for the parcels is found on page 6.)
2. The Assessor proposed valuing the subject properties for purposes of taxation as of January 1, 2002 ("the assessment date"). (E36 - E48). The Assessor's proposed values are shown in the chart on pages 7 and 8.
3. The Taxpayer timely filed protests of the proposed valuations, and requested that the subject properties be valued in the amounts shown in the chart on pages 7 and 8. (E36 - 48).
4. The Board denied the protests in each of the cases except for those parcels which are the subject of the appeals in Case Numbers 02R-119, 02R-123 and 02R-124. The Board determined that the actual or fair market value of the lot in Case Number 02R-119 was \$3,500. (E42). The Board determined in Case Numbers 02R-123 and 02R-124 that the actual or fair market value of each lot was \$5,400. (E47).

RIDGEVIEW SUBDIVISION
ADDITION



Case #	Legal Desc.	Assessor	Taxpayer	Board	Ex.
02R-113	Lot 1, Blk 7	\$4,727	\$350	\$4,727	37
	Lot 2, Blk 7	\$4,727	\$350	\$4,727	37
	Lot 3, Blk 7	\$4,727	\$350	\$4,727	37
	Lot 4, Blk 7	\$4,727	\$350	\$4,727	37
	Lot 5, Blk 7	\$4,727	\$350	\$4,727	37
02R-114	Lot 6, Blk 7	\$4,619	\$350	\$4,619	38
	Lot 7, Blk 7	\$4,619	\$350	\$4,619	38
	Lot 8, Blk 7	\$4,619	\$350	\$4,619	38
	Lot 9, Blk 7	\$4,619	\$350	\$4,619	38
	Lot 10, Blk 7	\$4,619	\$350	\$4,619	38
	Lot 11, Blk 7	\$4,619	\$350	\$4,619	38
02R-115	Lot 16, Blk 5	\$8,250	\$3,500	\$8,250	39
	Lot 17, Blk 5	\$8,250	\$3,500	\$8,250	39
	Lot 18, Blk 5	\$8,250	\$3,500	\$8,250	39
	Lot 19, Blk 5	\$8,250	\$3,500	\$8,250	39
	Lot 20, Blk 5	\$8,250	\$3,500	\$8,250	39
02R-116	Lot 21, Blk 6	\$4,462	\$350	\$4,462	40
	Lot 22, Blk 6	\$4,462	\$350	\$4,462	40
	Lot 23, Blk 6	\$4,462	\$350	\$4,462	40
	Lot 24, Blk 6	\$4,462	\$350	\$4,462	40
	Lot 25, Blk 6	\$4,462	\$350	\$4,462	40
	Lot 26, Blk 6	\$4,462	\$350	\$4,462	40
02R-117	Lot 8, Blk 6	\$8,250	\$2,500	\$8,250	41
02R-118	Lot 9, Blk 6	\$8,250	\$3,500	\$8,250	42
	Lot 10, Blk 6	\$8,250	\$3,500	\$8,250	42
	Lot 11, Blk 6	\$8,250	\$3,500	\$8,250	42
	Lot 12, Blk 6	\$8,250	\$3,500	\$8,250	42

02R-119	Lot 18, Blk 2	\$11,405	\$500	\$5,185	43
02R-120	Lot 6, Blk 3	\$5,000	\$350	\$5,000	44
	Lot 7, Blk 3	\$5,000	\$350	\$5,000	44
	Lot 8, Blk 3	\$5,000	\$350	\$5,000	44
	Lot 9, Blk 3	\$5,000	\$350	\$5,000	44
	Lot 10, Blk 3	\$5,000	\$350	\$5,000	44
02R-121	Lot 17, Blk 6	\$4,455	\$350	\$4,455	45
	Lot 18, Blk 6	\$4,455	\$350	\$4,455	45
	Lot 19, Blk 6	\$4,455	\$350	\$4,455	45
	Lot 20, Blk 6	\$4,455	\$350	\$4,455	45
02R-122	Lot 1, Blk 3	\$5,000	\$350	\$5,000	46
	Lot 2, Blk 3	\$5,000	\$350	\$5,000	46
	Lot 3, Blk 3	\$5,000	\$350	\$5,000	46
	Lot 4, Blk 3	\$5,000	\$350	\$5,000	46
	Lot 5, Blk 3	\$5,000	\$350	\$5,000	46
02R-123	Lot 14, Blk 2	\$1,375	\$500	\$5,400	47
	Lot 15, Blk 2	\$1,375	\$500	\$5,400	47
	Lot 16, Blk 2	\$1,375	\$500	\$5,400	47
	Lot 17, Blk 2	\$1,375	\$500	\$5,400	47
02R-124	Lot 12, Blk 2	\$11,000	\$500	\$5,000	48

5. The Taxpayer thereafter timely filed appeals of the Board's decisions to the Commission. (Appeal Form).
6. The Commission served a Notice in Lieu of Summons on the Board on or about September 16, 2002. The Board timely filed an Answer for each appeal on or about September 26, 2002.

7. The Commission consolidated each of Taxpayer's pending appeals for purpose of hearing in an Order dated April 2, 2003.
8. The Commission issued an Order for Hearing and Notice of Hearing for the consolidated appeals on April 2, 2003. The Notice set the matters for a hearing on the merits of the appeals for June 26, 2003.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The Taxpayer is the developer of the lots within the Ridgeview Subdivision.
2. The Taxpayer has elected not to vacate the plat for the vacant lots.
3. The Taxpayer has elected not to pave the platted streets.
4. The Taxpayer has elected not to install utilities and city services to the lots adjoining the unpaved street.
5. These are management decisions.
6. Forty-seven vacant lots line Pine Crest Drive and Cedar Buttes Drive, two streets in the Ridgeview Subdivision of Chadron. (E14).
7. Both streets are platted, however only one, Pine Crest Drive, has been paved. The lots along Pine Crest Drive also have city sewer, water, electricity and other utilities. The lots along Cedar Buttes Drive do not.

8. There are 27 lots in Block 5 of the Ridgeview Addition. (E14). The lots are bordered by Ridgeview Road to the west, and Pine Crest Drive to the east. (E14). Both streets are paved, and all city utilities and services are available to each lot in Block 5. Only five lots in Block 5 (Lots 16 through 20) are vacant. All other lots in the Block have been sold and developed.
9. Lot 9 in Block 5 sold for \$10,000 on September 30, 1997. (E23:1). Lot 7 in Block 5 sold for \$9,000 on December 2, 1997. (E22:1). The vacant lots in Block 5 (Lots 16 through 20) are available for sale at between \$10,000 and \$12,000 each. The assessed value of each of these lots is \$8,250. (E39).
10. Block 2 of Ridgeview Addition consists of 19 lots. (E14). The lots are bordered by Pine Crest Drive to the west, and Cedar Buttes Drive to the east. (E14). All city utilities and services are available to lots adjoining Pine Crest Drive. Only six lots in Block 2 (Lot 12 and Lots 14 through 18) are vacant. All other lots in the Block have been sold and developed.
11. Lot 12 and Lots 14 in Block 2 through 18 all border Cedar Buttes Drive. (E14). Cedar Buttes Drive is not paved, and no city services or utilities are available.

12. Lots 19 and 20 in Block 2 sold for \$27,000 on January 29, 2002. (E19:1). Lots 19 and 20 in Block 2 face Pine Crest Drive. (E14). Pine Crest Drive is a paved road and all city utilities and services are available.
13. The only lots in Block 2 which border Cedar Buttes Drive and which have been sold are Lots 11 and 13. Each lot was sold to the owner of the contiguous lot facing Pine Crest Drive. Lot 13, Block 2, sold on December 29, 1995, for \$4,250. (E25:1). Lot 11, Block 2, sold on February 23, 1996, for \$4,250. (E24:1).
14. Lot 12, Block 2 is assessed at \$5,000. (E47). Lots 14 through 17 in Block 2 are assessed at \$5,400 each. (E47). Lot 18 of Block 2 is assessed at \$11,405. (E43).
15. Block 6 consists of 26 lots. (E14). Block 6 is bordered on the west by Pine Crest Drive, and on the east by Cedar Buttes Drive. (E14). Pine Crest Drive is paved and all utilities and city services are available. Lots 8 through 12 border Pine Crest Drive. (E14). The lots are for sale at between \$10,000 and \$12,000 each. These lots have an assessed value of \$8,250 each. (E41; E42).
16. Lots 15 and 16 of Block 6 are the only lots facing Cedar Buttes Drive which have been sold. These lots were sold with Lots 13 and 14 for development of low-income housing. These lots are bordered by Royal Court on the north. (E14).

17. Lots 17 through 26 of Block 6 face Cedar Buttes Drive. (E14). Lots 17 through 20 of Block 6 are assessed at \$4,455 each. (E45). Lots 21 through 26 of Block 6 are assessed at \$4,462 each. (E40).
18. Block 3 consists of 10 lots. (E14). Each of the lots is bordered on the west by Cedar Buttes Drive. (E14). None of the lots in Block 3 have been sold. Each of the lots is assessed at \$5,000. (E46).
19. There are 11 lots in Block 7. (E14). Each of the lots is bordered on the west by Cedar Buttes Drive. (E14). None of the lots in Block 7 have been sold. Each of the lots is assessed at \$4,619. (E38).
20. The Assessor valued each of the lots adjoining Cedar Buttes Drive at fifty-cents per square foot.

**V.
ANALYSIS**

**A.
OVERVIEW**

The Taxpayer is the owner of the 47 parcels of vacant residential real property which are the subject of these appeals. The parcels line two streets in the Ridgeview Subdivision, an Addition to the City of Chadron. (E14). The Taxpayer acquired the land and platted the subdivision more than 25 years ago. The two streets which run north and south through the subdivision are

Pine Crest Drive and Cedar Buttes Drive. (E14). Both streets are platted. Only Pine Crest Drive, however, has been paved. The lots along Pine Crest drive have access to city sewer, water, electricity and other utilities. The lots along Cedar Buttes Drive do not have access to any utilities or services.

The Assessor testified that the City of Chadron owned approximately 50 vacant residential lots which sold for between \$.55 and \$.65 per square foot. The Assessor further testified that lots in the Canyon View subdivision sold for approximately \$.73 per square foot. The Assessor also testified that developed single-family residential sites were sold for \$1.10 per square foot.

The Assessor testified that based on these sales vacant lots in the Ridgeview Subdivision with access to utilities and city services were valued at \$1.10 per square foot for tax year 2002. The Assessor further testified that based on these sales of developed single-family residential sites, vacant lots in the Ridgeview Addition which lacked access to city utilities and services were valued at \$.50 per square foot. The Assessor was unable to explain the basis for the adjustment from \$1.10 per square foot for developed sites to \$.50 per square foot for undeveloped sites.

B.
TAXPAYER'S REQUESTED VALUE

The Taxpayer alleges that the assessed value of these lots exceeds actual or fair market value. The Taxpayer also alleges that the assessed values of the lots in three specific areas of the Ridgeview Addition ("pink," "blue" and "yellow," as shown on Exhibit 49) exceed actual or fair market value. The only evidence of value offered by the Taxpayer is the prior year's assessed value. This testimony is not relevant. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), and *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988). The Taxpayer adduced no other evidence of value.

C.
CASE NUMBER 02R-115:
VACANT LOTS IN BLOCK 5 FACING PINE CREST DRIVE

The "pink" area includes part of Block 5 of Ridgeview Addition. There are 27 lots in Block 5. The lots are bordered by Ridgeview Road to the west, and Pine Crest Drive to the east. Both streets are paved, and all city utilities and services are available. Only five lots in Block 5 (Lots 16 through 20) are vacant. All other lots in the Block have been sold and developed.

Lot 9 in Block 5 sold for \$10,000 on September 30, 1997.
(E23:1). Lot 9 is approximately 7,500 square feet in size.
(E23:2). The purchase price was approximately \$1.33 per square foot. Lot 7 in Block 5 sold for \$9,000 on December 2, 1997.
(E22:1). Lot 7 is also approximately 7,500 square feet in size.
(E22:2). The purchase price was approximately \$1.20 per square foot.

Each of the vacant lots in Block 5 (Lots 16 through 20) are available for sale at between \$10,000 and \$12,000 each. Each of the lots is approximately 7,500 square feet in size. (E17:3). The asking price is at least \$1.33 per square foot. The assessed value of each of these lots is \$8,250, or \$1.10 per square foot. (E17:3). The assessed value of each lot is less than the purchase price paid for a comparable lot.

The Taxpayer alleges that the assessed value of the lots exceeds actual or fair market value in that the lots have been for sale for more than twenty-years, and have not sold. However, the Taxpayer admitted that these lots are listed for sale for between \$10,000 and \$14,000. Taxpayer's allegation that the assessed value of these lots (\$8,250) exceeds actual or fair market value is not credible when the asking price for the lots exceeds \$10,000.

The Taxpayer has failed to adduce competent and credible evidence that the assessed value of these lots exceeds actual or fair market value.

D.

**CASE NUMBERS 02R-119, 02R-123 AND 02R-124:
VACANT LOTS IN BLOCK 2 FACING CEDAR BUTTES DRIVE**

The "blue" area of the Ridgeview Addition includes part of Block 2. There are 19 lots in Block 2. The lots are bordered by Pine Crest Drive to the west, and by Cedar Buttes Drive to the east. Pine Crest Drive is paved, and all city utilities and services are available. Only six lots in Block 2 (Lot 12 and Lots 14 through 18) are vacant. All of the vacant lots border Cedar Buttes Drive. Cedar Buttes Drive is not paved, and no city services or utilities are available.

Real property may be valued using professionally accepted mass appraisal methods. Neb. Rev. Stat. §77-112 (Cum. Supp. 2002). Professionally accepted mass appraisal methods include the sales comparison approach, the cost approach, and the income approach. Neb. Rev. Stat. §77-112 (Cum. Supp. 2002). The Assessor testified that the lot values were determined using all three approaches to value.

The Commission's Order for Hearing provides:

"The County's evidence shall include copies of the Property Record File for the subject property, as copies of all

information used to set the assessed value of the subject property for the tax year at issue."

Order for Hearing and Notice of Hearing, p. 2, ¶3(c) (Emphasis in original). The Board adduced Exhibits 17 through 26, 35 and 36 and the testimony of the Assessor. This is the only information offered by the Board concerning any of the three approaches to value. This information consists of the Form 521 for sales of certain lots in the Ridgeview Addition.

Lots 19 and 20 in Block 2 sold for \$27,000 on January 29, 2002. (E19:1). Lots 19 and 20 in Block 2 face Pine Crest Drive. Pine Crest Drive is a paved road and all city utilities and services are available. These lots all have "site improvements." "Site improvements" are defined as:

"Improvements on and off a site that make it suitable for its intended use or development. On-site developments include grading, landscaping, paving, and utility hookups; off-site improvements include streets, curbs, sidewalks, drains, and connecting utility lines."

The Dictionary of Real Estate Appraisal, 4th Ed., The Appraisal Institute, 2002, p. 266. The lots which abut the west side of Cedar Buttes Drive lack both on-site and off-site improvements.

The only lots in Block 2 which (1) have been sold; (2) lack both on-site and off-site improvements; and (3) abut Cedar Buttes

Drive on the west side of that street are Lots 11 and 13. Each lot was sold to the owner of the adjoining lot which abuts Pine Crest Drive. Lot 13, Block 2, sold on December 29, 1995, for \$4,250. (E25:1). Lot 13, Block 2, is 10,800 square feet in size. (E25:2). The purchase price paid was \$.394 per square foot. ($\$4,250 \div 10,800 \text{ sq. ft.} = \$.394$). Lot 11, Block 2, sold on February 23, 1996, for \$4,250. (E24:1). Lot 11, Block 2, is 10,000 sq. ft. in size. (E24:2). The purchase price paid was \$.425 per square foot. ($\$4,250 \div 10,000 \text{ sq. ft.} = \$.425 \text{ per sq. ft.}$). This is the only evidence of the price paid for lots in Block 2 of Ridgeview Addition.

The Taxpayer alleges that the prices paid for these two lots exceed actual or fair market value since the lots were purchased by adjoining landowners. The Taxpayer adduced no evidence concerning what adjustment, if any, should be made to the purchase price to compensate for purchase by an adjoining landowner.

The only evidence of actual or fair market value of the vacant lots in Blocks 2, 3, 6, and 7 are these sales. The threshold question is whether the lots which sold are "comparable" to the remaining vacant lots. Professionally accepted mass appraisal methods hold that no two parcels of land are exactly alike.

"They might be identical in size and physical characteristics, but each parcel has a unique location and is likely to differ from other parcels in some way. Typical differences requiring adjustments are in time of sale, location, and physical characteristics. Adjustments may also need to be made for atypical financing.

Property Assessment Valuation, 2nd Ed., International Association of Assessing Officers, 1996, p. 76. Furthermore, when considering the land component of real property, "comparable" properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location. *Property Assessment Valuation, 2nd Ed., International Association of Assessing Officers, 1996, p. 70 - 76.*

The lots which sold are located in the same neighborhood as the remaining vacant lots. The lots which sold have no access to paved roads, no access to any utilities, and each was part of the Taxpayer's single-family residential development. The Commission, from the entire record before it, finds and determines that the two lots which sold in Block 2 which abut Cedar Buttes Road are in fact comparable to the remaining lots in the Ridgeview Addition.

The Supreme Court has addressed factual circumstances where one sale is the only evidence of value. The Court held in *Firethorn Inv. v. Lancaster Cty. Bd. of Equal.*, 261 Neb. 231, 241, 622 N.W.2d 605, 612 (2001):

"We further hold that a single sale may in some instances provide evidence of market value. We have recognized that in tax valuation cases, actual value is largely a matter of opinion and without a precise yardstick for determination with complete accuracy. A single sale should not be excluded merely because it is a single sale. Rather the fact that evidence of other sales is not presented goes to the weight of the evidence."

Here there are two sales of "comparable" property. The sales pre-date the assessment date by six years. There is no evidence of any "time adjustment" which might be necessary to make those sales representative of the actual or fair market value of the subject property as of the assessment date. As in the case addressed by the Supreme Court, however, these sales are the only evidence of value.

These two sales establish that lots which are 10,000 square feet in size or smaller have a higher per square foot market value than lots which are larger than 10,000 square feet in size. This difference is consistent with the principle of "economies of

scale." This principle proposes that as quantity increases, price per unit of measure decreases. *The Appraisal Real Estate*, 12th Ed., The Appraisal Institute, 2002, p. 425.

The Commission, from the limited record before it, concludes that these two sales are representative of the actual or fair market value of those lots in the Ridgeview Addition which abut Cedar Buttes Drive. These sales establish that the actual or fair market value of lots which are 10,000 square feet or less in size is \$.425 per square foot. For lots greater than 10,000 square feet in size, the actual or fair market value is \$.394 per square foot.

Lot 12, Block 2 is assessed at \$5,400. (E48). Lot 12 is approximately 10,000 square feet in size. (E17:12). The actual or fair market value of this lot, based on the sale of comparable property, is \$.425 per square foot, or \$4,250. The decision of the Board to deny the protest under these facts is unreasonable and arbitrary. The valuation decision of the Board is also unreasonable.

Lots 14 through 17 of Block 2 are assessed at \$5,400. (E47). Lots 14 through 17 are approximately 10,800 square feet in size. (43,200 square feet ÷ 4 lots = 10,800 square feet per lot). (E17:11). The actual or fair market value of these lots, based on the sale of comparable property, is \$.394 per square foot, or \$4,255. (10,800 square feet x \$.394 per square foot =

\$4,255.) The decision of the Board to deny the protest under these facts is unreasonable and arbitrary. The valuation decision of the Board is also unreasonable.

Lot 18, Block 2 is assessed at \$5,000. (E48). Lot 18 is approximately 10,370 square feet in size. (E17:7). The actual or fair market value of this lot, based on the sale of comparable property, is \$.394 per square foot, or \$4,086. (10,370 square feet x \$.394 per square foot = \$4,086.) The decision of the Board to deny the protest under these facts is unreasonable and arbitrary. The valuation decision of the Board is also unreasonable.

E.

**CASE NUMBERS 02R-117, 02R-118:
VACANT LOTS IN BLOCK 6 FACING PINE CREST DRIVE**

There are 26 lots in Block 6. Block 6 is bordered on the west by Pine Crest Drive, and on the east by Cedar Buttes Drive. Lots 8 through 12 border Pine Crest Drive. Pine Crest Drive is paved and all utilities and city services are available to lots adjoining Pine Crest Drive.

Lots 8 through 12 are listed for sale for between \$10,000 and \$12,000 each. The lots are assessed at \$8,250 each. There is no evidence to establish that the Board's decision to deny the protests as to these lots was unreasonable or arbitrary.

F.
CASE NUMBERS 02R-116 AND 02R-121:
VACANT LOTS IN BLOCK 6 FACING CEDAR BUTTES DRIVE

There are 10 lots in Block 6. Lots 17 through 26 of Block 6 face Cedar Buttes Drive, a platted but unpaved street. These lots are comparable to the lots in Block 5, located across the street on Cedar Buttes Drive. Lots 17 through 20 are approximately 8,910 square feet in size. ($35,640$ square feet \div 4 lots = 8,910 square feet per lot). (E17:9). Each of the lots is assessed at \$4,455. The actual or fair market value of these lots, based on the sale of comparable property, is \$.425 per square foot, or \$3,787. ($8,910$ square feet \times \$.425 per square foot = \$3,787.) The decision of the Board to deny the protest under these facts is unreasonable and arbitrary. The valuation decision of the Board is also unreasonable.

Lots 21 through 26 are assessed at \$4,462 each. (E40). Lots 21 through 26 are approximately 8,925 square feet in size. ($53,550$ square feet \div 6 lots = 8,925 square feet per lot). (E17:4). The actual or fair market value of these lots, based on the sale of comparable property, is \$.425 per square foot, or \$3,793. ($8,925$ square feet \times \$.425 per square foot = \$3,793.) The decision of the Board to deny the protest under these facts is unreasonable and arbitrary. The valuation decision of the Board is also unreasonable.

G.
CASE NUMBERS 02R-120 AND 02R-122:
VACANT LOTS IN BLOCK 3 FACING CEDAR BUTTES DRIVE

There are 10 lots in Block 3. Each lot is bordered on the west by Cedar Buttes Drive. None of the lots have been sold. Each of the lots is assessed at \$5,000. (E44; E46).

Lots 1 through 10 of Block 3 are approximately 10,000 square feet in size. (50,000 square feet ÷ 5 lots = 10,000 square feet per lot). (E17:8; E17:10). The actual or fair market value of these lots, based on the sale of comparable property, is \$.425 per square foot, or \$4,250. (10,000 square feet x \$.425 per square foot = \$4,250.) The decision of the Board to deny the protest under these facts is unreasonable and arbitrary. The valuation decision of the Board is also unreasonable.

H.
CASE NUMBER 02R-113 AND 02R-114:
VACANT LOTS (6 THROUGH 10) IN BLOCK 7 FACING CEDAR BUTTES DRIVE

Block 7 consists of 11 lots. Each of the lots is bordered on the west by Cedar Buttes Drive. None of the lots in Block 7 have been sold.

Lots 1 through 5 of Block 7 are assessed at \$4,727. (E37). Lots 1 through 5 are approximately 9,550 square feet in size. (47,748 square feet ÷ 5 lots = 9,549.6 square feet per lot). (E17:1). The actual or fair market value of these lots, based on the sale of comparable property, is \$.425 per square foot, or

\$4,059. (9,549.6 square feet x \$.425 per square foot = \$4,059.)

The decision of the Board to deny the protest under these facts is unreasonable and arbitrary. The valuation decision of the Board is also unreasonable.

Lots 6 through 11 of Block 7 are assessed at \$4,619. (E38). Lots 6 through 10 are approximately 11,086.2 square feet in size. (55,431 square feet ÷ 5 lots = 11,086.2 square feet per lot). (E17:2). The actual or fair market value of these lots, based on the sale of comparable property, is \$.394 per square foot, or \$4,368. (11,086.2 square feet x \$.394 per square foot = \$4,368.) The decision of the Board to deny the protest under these facts is unreasonable and arbitrary. The valuation decision of the Board is also unreasonable.

VI. CONCLUSIONS OF LAW

1. Neb. Rev. Stat. §77-1510 (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §3) provides that decisions of a County Board of Equalization made pursuant to Neb. Rev. Stat. §77-1502 are appealed to the Commission. Neb. Rev. Stat. §77-5003 also provides that the Commission has jurisdiction over decisions of a County Board of Equalization.
2. The Taxpayer timely filed appeals of the Board's decisions. The Commission therefore has jurisdiction over the Parties

to these appeals and over the subject matter of these appeals.

3. The Taxpayer failed to adduce clear and convincing evidence that the decision of the Board was unreasonable or arbitrary in Case Numbers 02R-115, 02R-117 and 02R-118. The Taxpayer has failed to meet his burden of persuasion imposed by *Garvey Elevator*. The Board's decisions in these three appeals must be affirmed.
4. There is no evidence in the record explaining how the Assessor determined the \$.50 per square foot assessed values of the lots in Case Numbers 02R-113, 02R-114, 02R-116, or 02R-119 through 02R-124. The Board relied on the Assessor's recommendation in determining the actual or fair market value of the lots in these appeals.
5. The Board failed to act upon sufficient competent evidence in making its decision. The Board's decision is therefore unreasonable and arbitrary under the *Garvey* standard.
6. The Taxpayer has also demonstrated by clear and convincing evidence that the Board's determination of value was unreasonable. The Board's decision must therefore be vacated and reversed as required by *Garvey*.

**VIII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the Dawes County Board of Equalization's decisions denying the Taxpayer's protests in Case Numbers 02R-115, 02R-117 and 02R-118 are affirmed.
2. That the Dawes County board of Equalization's decisions denying the Taxpayer's protests in Case Numbers 02R-113, 02R-114, 02R-116, 02R-119, 02R-120, 02R-121, 02R-122, 02R-123 and 02R-124 are vacated and reversed.
3. That Taxpayer's real property shall be valued for those appeals as follows for tax year 2002:

- a. Case Number 02R-113: Lots 1 through 5, Block 7, Ridgeview Addition, City of Chadron, Dawes County, Nebraska shall each be valued as follows for tax year 2002:

Land	\$4,059
Improvements	\$ -0-
Total	\$4,059

- b. Case Number 02R-114: Lots 6 through 11, Block 7, Ridgeview Addition, City of Chadron, Dawes County, Nebraska shall each be valued as follows for tax year 2002:

Land	\$4,368
Improvements	\$ -0-
Total	\$4,368

- c. Case Number 02R-115: **No Change:** Lots 16 through 20, Block 5, Ridgeview Addition, City of Chadron, Dawes County, Nebraska shall each be valued as follows for tax year 2002:

Land	\$8,250
Improvements	\$ -0-
Total	\$8,250

- d. Case Number 02R-116: Lots 21 through 26, Block 6, Ridgeview Addition, City of Chadron, Dawes County, Nebraska shall each be valued as follows for tax year 2002:

Land	\$3,793
Improvements	\$ -0-
Total	\$3,793

- e. Case Number 02R-117: **No Change:** Lot 8, Block 6, Ridgeview Addition, City of Chadron, Dawes County, Nebraska shall each be valued as follows for tax year 2002:

Land	\$8,250
Improvements	\$ -0-
Total	\$8,250

- f. Case Number 02R-118: **No Change:** Lots 9 through 12, Block 6, Ridgeview Addition, City of Chadron, Dawes County, Nebraska shall each be valued as follows for tax year 2002:

Land	\$8,250
Improvements	\$ -0-
Total	\$8,250

- g. Case Number 02R-119: Lot 18, Block 2, Ridgeview Addition, City of Chadron, Dawes County, Nebraska shall each be valued as follows for tax year 2002:

Land	\$4,086
Improvements	\$ -0-
Total	\$4,086

- h. Case Number 02R-120: Lots 6 through 10, Block 3, Ridgeview Addition, City of Chadron, Dawes County, Nebraska shall each be valued as follows for tax year 2002:

Land	\$4,250
Improvements	\$ -0-
Total	\$4,250

i. Case Number 02R-121: Lots 17 through 20, Block 6, Ridgeview Addition, City of Chadron, Dawes County, Nebraska shall each be valued as follows for tax year 2002:

Land	\$3,787
Improvements	\$ -0-
Total	\$3,787

j. Case Number 02R-122: Lots 1 through 5, Block 3, Ridgeview Addition, City of Chadron, Dawes County, Nebraska shall each be valued as follows for tax year 2002:

Land	\$4,250
Improvements	\$ -0-
Total	\$4,250

k. Case Number 02R-123: Lots 14 through 17, Block 2, Ridgeview Addition, City of Chadron, Dawes County, Nebraska shall each be valued as follows for tax year 2002:

Land	\$4,255
Improvements	\$ -0-
Total	\$4,255

l. Case Number 02R-124: Lot 12, Block 2, Ridgeview Addition, City of Chadron, Dawes County, Nebraska shall each be valued as follows for tax year 2002:

Land	\$4,250
Improvements	\$ -0-
Total	\$4,250

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

IT IS SO ORDERED.

Dated this 27th day of August, 2003.

Susan S. Lore, Commissioner

Seal

Mark P. Reynolds, Chair

DISSENT

I would respectfully dissent from the Findings and Order of the Panel. I would find that the sales of vacant lots in Block 2 are not comparable to the properties in Block 3 (Section G of the Panel's Analysis.) I would also find that the sales of vacant lots in Block 2 are not comparable to the properties in Block 7 (Section H of the Panel's Analysis). The lots in Block 3 and Block 7 do not have paved streets. No services are available to these lots. I would therefore conclude that the actual or fair market value of these lots is Three Hundred and Fifty Dollars (\$350) each, the value testified to by the Taxpayer.

The Taxpayer testified that the lots in Block 3 and 7 are "unbuildable" because the sale of one lot would require investment in streets and services that would be "uneconomic." Nothing in the record allows the Commission to conclude that development would be feasible.

Wm. R. Wickersham, Vice-Chair