

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

KENNETH D. MAXWELL,)	
)	
Appellant,)	CASE NO. 03R-141
)	
vs.)	
)	FINDINGS AND
LANCASTER COUNTY BOARD OF)	FINAL ORDER
EQUALIZATION,)	
)	
Appellee.)	

Appearances:

For the Appellant: Kenneth D. Maxwell
9300 Southwest 119th Street
Denton, NE 68339

For the Appellee: Michael E. Thew, Esq.
Chief Deputy, Civil Division,
Lancaster County Attorney's Office
575 South 10th Street
Lincoln, NE 68508

Before: Commissioners Hans, Lore, Reynolds, and Wickersham.

**I.
STATEMENT OF THE CASE**

Kenneth D. Maxwell ("the Taxpayer") owns an improved tract of land legally described as Lots 5 and 6, Block 2, Peck's Grove Park Addition, in Lancaster County, Nebraska. (E10:2). The 9,700 square foot tract of land is improved with a single-family residence with 1,083 square feet of above-grade living area built in 1925. (E9:1).

The Lancaster County Assessor ("the Assessor") determined that the actual or fair market value of the Taxpayer's real property was \$83,500 as of the January 1, 2003, assessment date.

(E1). The Taxpayer timely filed a protest of that determination and alleged that the actual or fair market value of the property was \$52,030. (E4:8). The Lancaster County Board of Equalization ("the Board") denied the protest. (E1).

The Taxpayer filed an appeal of the Board's decision on August 26, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 13, 2003, which the Board answered on October 10, 2003. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on January 15, 2004. An Affidavit of Service in the Commission's records establishes that a copy of the Order and Notice was served on each of the Parties.

The Commission called the case for a hearing on the merits of the appeal in the City of Lincoln, Lancaster County, Nebraska, on March 9, 2004. The Taxpayer appeared personally at the hearing. The Board appeared through Michael E. Thew, Chief Deputy, Civil Division, Lancaster County Attorney's Office. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer.

The Board, prior to the hearing, offered to confess judgment. The Taxpayer declined the offer. Each Party was afforded the opportunity to present evidence and argument at the hearing before the Commission as required by law. The Board, at the conclusion of the hearing, stipulated that for the purposes

of allocating costs pursuant to Neb. Rev. Stat. §77-1510.01 (Reissue 2003), all costs incurred by the Board were incurred prior to making the offer. The Taxpayer requested that the Commission take the matter under advisement. The matter now comes for decision.

**II.
ISSUES**

The issues before the Commission are (1) whether the Board's decision was incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's value was reasonable.

**III.
APPLICABLE LAW**

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the Board's decision was incorrect and (2) that the Board's decision was unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7) (Reissue 2003)). The "unreasonable or arbitrary" element requires clear and convincing evidence that the Board either (1) failed to faithfully perform its official duties; or (2) failed to act upon sufficient competent evidence in making its decision. The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the Board's value was unreasonable. *Garvey*

Elevators v. Adams County Bd., 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

**IV.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer adduced no documentary evidence of actual or fair market value of either the subject property or of any "comparable" properties.
2. The Taxpayer testified that he purchased the subject property in 1958 for \$7,500 and in his opinion the property wouldn't sell for \$50,000 as of the assessment date. The basis for the Taxpayer's opinion of value was the 2002 assessed value of the subject property.
3. The Board adduced uncontroverted evidence that the actual or fair market value of the subject property was \$69,600 as of the assessment date.

**V.
ANALYSIS**

The only issue presented is the actual or fair market value of the Taxpayer's real property as of the January 1, 2003, assessment date. The Taxpayer's only evidence of actual or fair market value is his opinion testimony based on the prior year's assessment that the actual or fair market value was something

less than \$50,000 as of the 2003 assessment date. 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). The Taxpayer's opinion of value is based on the 2002 assessed value of the subject property. The prior year's assessment is not relevant to the subsequent year's valuation. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988). Evidence establishing a difference of opinion is insufficient to overcome the statutory presumption in favor of the Board. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 524 (2001). Furthermore, a taxpayer who offers no evidence that the subject property is valued in excess of its actual value and who only produces evidence complaining of the assessor's methodology fail to meet his burden of proof. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

The Board adduced uncontroverted evidence from its appraiser that the actual or fair market value of the subject property was \$69,600 as of the assessment date. This evidence establishes clear and convincing evidence that the Board's decision was incorrect, and both unreasonable and arbitrary.

VI.
CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Parties and over the subject matter of this appeal.
2. The Commission is required to affirm the decision of the Board unless evidence is adduced establishing that the Board's action was incorrect and either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Reissue 2003).
3. The Board is presumed to have faithfully performed its official duties in determining the actual or fair market value of the property. The Board is also presumed to have acted upon sufficient competent evidence to justify its decision. These presumptions remain until the Taxpayer presents competent evidence to the contrary. If the presumption is extinguished the reasonableness of the Board's value becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests on the taxpayers. *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).
4. "Actual value" is defined as the market value of real property in the ordinary course of trade, or the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's-length transaction, between a willing buyer and

willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. Neb. Rev. Stat. §77-112 (Reissue 2003).

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 prior year's assessment is not relevant to the subsequent year's valuation. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).
7. The burden of persuasion imposed on the complaining taxpayers, in an appeal from a county board of equalization, is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed on the property when compared with 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 Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 524 (2001).

8. Taxpayers who offer no evidence that the subject property is valued in excess of its actual value and who only produces evidence that is aimed at discrediting valuation methods utilized by county assessor fails to meet their burden of proving that value of the property was not fairly and proportionately equalized or that valuation placed upon the 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. The Board's evidence establishes that the Board's decision was incorrect, and both unreasonable and arbitrary. That decision must accordingly be vacated and reversed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Lancaster County Board of Equalization's Order setting the assessed value of the subject property for tax year 2003 is vacated and reversed.
2. The Taxpayers' real property legally described as Lot 5 and 6, Block 2, Peck's Grove Park Addition, more commonly known as 3410 "X" Street, City of Lincoln, Lancaster County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$26,000
Improvements	\$43,600
Total	\$69,600

3. Any request for relief by any Party not specifically granted by this order is denied.
4. This decision, if no appeal is filed, shall be certified to the Lancaster County Treasurer, and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003).
5. This decision shall only be applicable to tax year 2003.
6. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

Dated this 9th day of March, 2004.

Robert L. Hans, Commissioner

Susan S. Lore, Commissioner

Mark P. Reynolds, Vice-Chair

Seal

Wm. R. Wickersham, Chair