

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

WILLIAM D. SCOTT and TRACY S.)		
SCOTT,)		
Appellants,)		CASE NO. 03R-188
vs.)		
LANCASTER COUNTY BOARD OF)		FINDINGS AND
EQUALIZATION,)		FINAL ORDER
Appellee.)		

Appearances:

For the Appellants: William D. Scott
2900 Sheridan Blvd.
Lincoln, NE 68502

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**

William D. Scott ("the Taxpayer") and Tracy S. Scott, his wife, own an improved tract of land legally described as Lots 19 and 20, Block 7, Sheridan Park Addition, City of Lincoln, Lancaster County, Nebraska. (E9:2). The tract of land is improved with a two-story, single-family residence with approximately 3,228 square feet of above-grade finished living area originally built in 1925. (E9:4). The residence has a basement which is approximately 1,930 square feet in size. Approximately 70% of the basement is "finished." (E14:2). There

is also a partially-finished attic which is approximately 556 square feet in size. (E3:10).

The Taxpayer and his wife purchased the property in November, 2001, for \$295,000. (E14:3). The Taxpayer then completely updated the residence. The updating included: removing and replacing old plumbing; installation of insulation and drywall; updating the electrical system; sanding and sealing the original wood floors; adding an addition to the kitchen; installing maple cabinets; granite and formed concrete counter tops; removing the tiled roof; replacing the felt and reinstalling the roof tiles; removing the boiler heating system and installing three heat pumps, two new furnaces and central air conditioning; and other improvements. (E14:2; E3:5 - 13). The Taxpayer and his wife paid approximately \$125,000 to \$150,000 for these improvements. The Taxpayer was unable to quantify the costs of the architect; the cost of the services of a structural engineer; the value of the Taxpayer's "sweat equity;" or the value of the Taxpayer's services as the general contractor for the remodeling. The Taxpayer by occupation is a licensed commercial real estate broker who has been involved in the renovation of historic commercial properties.

The Lancaster County Assessor ("the Assessor") determined that the actual or fair market value of the Taxpayer's real property was \$613,900 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 \$290,262.50. (E3:31). The Lancaster County Board of Equalization ("the Board") employed a referee, who estimated the actual or fair market value to be \$526,700. (E3:44). The Board granted the protest in part and determined that the actual or fair market value of the subject property was \$492,300 as of the assessment date. (E1). The Taxpayer appealed the Board's decision on August 25, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 17, 2003, which the Board answered on October 17, 2003. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on March 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 June 3, 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.

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 close of the Taxpayer's case-in-chief, moved to dismiss the appeal for failure to adduce any clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary.

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, as amended by 2004 Neb. Laws, L.B. 973, §51)). 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's opinion of actual or fair market value of the subject property is \$450,000, based on the Board's fee appraisal which recited a value of \$510,000. (E14).
2. The Taxpayer requested an assessed value of \$298,000 to equalize the assessed value of the subject property with comparable properties.
3. The Taxpayer failed to adduce any evidence of the actual or fair market value of any "comparable" properties.
4. The Taxpayer failed to adduce any evidence of the level of assessment for those "comparable" properties.

**V.
ANALYSIS**

The issues presented are (1) the actual or fair market value of the Taxpayer's real property as of the January 1, 2003, assessment date; and (2) the equalized value of that real property. (E3:31). The Taxpayer's only evidence of actual or fair market value is opinion testimony based on the price paid for the subject property. 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 testified that in his opinion the actual or fair market value of the subject property is \$450,000, based on Exhibit 14, a fee-appraisal prepared on behalf of the Board. The appraisal indicates the actual or fair market value of the subject property was \$510,000 as of the assessment date. (E14:3). The Taxpayer adduced no evidence concerning the difference of \$60,000 between the opinion of value expressed in the fee appraisal and the Taxpayer's opinion of value.

The Taxpayer also alleges the purchase price paid is evidence of actual or fair market value. There is authority for the proposition that the purchase price should be given strong consideration in determining actual or fair market value. *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982). Purchase price alone, however, is not conclusive evidence of the actual value of property for assessment purposes. *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2D 631, 637, (1998).

Here the Taxpayer made \$125,000 to \$150,000 of improvements to the subject property. The Taxpayer was unable to quantify the costs of architectural fees, structural engineers fees, and services of a general contractor. Services of a general

contractor alone may range from 10.2% to 20.8%. *Marshall-Swift Residential Cost Handbook*, Marshall-Swift L.P., 12/2002, D-8.

The Taxpayer adduced no clear and convincing evidence of the actual or fair market value of the subject property as of the assessment date.

The Taxpayer also alleged that the assessed value of the subject property is not equalized with comparable properties. The Taxpayer alleged that the properties referenced in Exhibit 26 are comparable to the subject property. "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. "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. Most adjustments are for physical characteristics. *Property Assessment Valuation*, 2nd Ed., 1996, p.105.

Any Party utilizing comparable properties is required to provide copies of the Property Record File for those properties. Title 442, Neb. Admin. Code, ch. 5, §020.06. (12/03). See also

Order for Hearing, March 15, 2004, ¶13(a). The Taxpayer failed to provide any documentary evidence. The Taxpayer has therefore failed to provide clear and convincing evidence that any of the properties referenced in Exhibit 26 are truly comparable to the subject properties.

The Taxpayer has also failed to adduce evidence of the actual or fair market value of the "comparable" properties, or the level of assessment for those properties. There is, therefore, no evidence that the assessed value of the subject property is not equalized with comparable properties.

Finally, the Taxpayer has adduced no evidence that the Board's decision was incorrect and either unreasonable or arbitrary. 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). 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 incorrect and either unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998). The Board's Motion to Dismiss must accordingly be granted.

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, as amended by 2004 Neb. Laws, L.B. 973, §51)).
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 taxpayer. *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).
4. "Actual value" is 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. Evidence of sale price alone is insufficient to overcome the presumption that the board of equalization has valued the property correctly. Where the evidence discloses the circumstances surrounding the sale and shows that it was an arm's length transaction between a seller who was not under compulsion to sell and a buyer who was not compelled to buy, it should receive strong consideration. *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982).
7. "It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual

value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value." *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2D 631, 637, (1998).

8. 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. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).
9. 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. The burden of persuasion imposed on the complaining taxpayer, 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).

11. 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 incorrect, and either unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998).
12. The Taxpayer failed to adduce any clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Board's motion to dismiss accordingly must be granted.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Board's Motion to Dismiss is granted.

2. The Lancaster County Board of Equalization's Order setting the assessed value of the subject property for tax year 2003 is therefore final.
3. The Taxpayer's real property legally described as Lots 19 and 20, Block 7, Sheridan Park Addition, more commonly known as 2900 Sheridan Blvd., in the City of Lincoln, Lancaster County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$ 73,125
Improvements	\$419,175
Total	\$492,300
4. Any request for relief by any Party not specifically granted by this order is denied.
5. 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, as amended by 2004 Neb. Laws, L.B. 973, §51)).
6. This decision shall only be applicable to tax year 2003.
7. 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 4th day of

June, 2004. The same were approved and confirmed by Commissioners Hans, Reynolds and Wickersham, and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5)(Reissue 2003).

Signed and sealed this 4th day of June, 2004.

SEAL

William R. Wickersham, Chair