

COPY

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

ADDAM E. MAXWELL,)	
)	
Appellant,)	CASE NO. 03R-229
)	
vs.)	
)	
DOUGLAS COUNTY BOARD OF)	FINDINGS AND
EQUALIZATION,)	FINAL ORDER
)	
Appellee.)	

Appearances:

For the Appellant: Addam E. Maxwell
1362 South 196th Street
Omaha, NE 68130

For the Appellee: Christine A. Lustgarten, Esq.
Chief Deputy, Civil Division
Douglas County Attorneys Office
909 Civic Center
Omaha, NE 68183

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

**I.
STATEMENT OF THE CASE**

Addam E. Maxwell ("the Taxpayer") owns a tract of land approximately 8,621 square feet in size legally described as Lot 17, Centennial Addition, Douglas County, Nebraska. (E22:2). The tract of land is improved with a two-story, single-family residence with 2,599 square feet of above-grade finished living area built in 2002. (E22:1).

The Douglas County Assessor ("the Assessor") determined that the actual or fair market value of the Taxpayer's real property was \$242,100 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 \$100,000. (E2:1). The Douglas County Board of Equalization ("the Board") granted the protest in part and determined that the actual or fair market value of the property was \$200,000 as of the assessment date. (E2:1).

The Taxpayer filed an appeal of the Board's decision on August 25, 2004. The Commission served a Notice in Lieu of Summons on the Board on September 29, 2003, which the Board answered out of time, but with leave of the Commission on January 8, 2004. 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 9, 2004. The Taxpayer appeared personally at the hearing. The Board appeared through Christine A. Lustgarten, Esq., Chief Deputy, Civil Division, Douglas County Attorneys Office. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Wickersham served as the presiding officer.

II.
ISSUES

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayer's valuation protest was incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determination of value was unreasonable.

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 2003 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 acquired the subject property in January, 2003, for \$221,000. (E2:1).
2. The Taxpayer's opinion of actual or fair market value is \$100,000 as of the assessment date. (E2:1; E27:1).
3. The Taxpayer failed to adduce any evidence in support of his opinion of value.
4. The Taxpayer failed to adduce any evidence that the Board's decision was either unreasonable or arbitrary.

**V.
ANALYSIS**

The Taxpayer paid \$221,000 for the subject property in January, 2004. The Taxpayer alleges that (1) actual or fair market value of the subject property was adversely impacted by the fact that construction of the residential improvements was not completed as of the January 1, 2003, assessment date; (2) the actual or fair market value of the subject property was adversely impacted by the bankruptcy of the builder; (3) the actual or fair market value of the subject property was adversely impacted by certain builders' or mechanics' liens filed against the subject property; and (4) the actual or fair market value of the subject

property was adversely impacted by the lack of a qualified developer.

The assessment date at issue in this appeal is January 1, 2003. Neb. Rev. Stat. §77-1301(Reissue 2003). The Taxpayer took possession of the subject property on January 24, 2003. The Taxpayer alleged that the construction of the residential improvements was 70% to 75% complete as of the assessment date. The Taxpayer also testified however, that the only item which was not complete was carpeting of some of the rooms and painting of some of the interior. The Taxpayer adduced no evidence of the impact on actual or fair market value of the 70% - 75% completion of the residential improvements.

The Taxpayer also contends that the bankruptcy of his builder adversely impacted the actual or fair market value of the subject property as of the assessment date. The Taxpayer adduced no evidence of the date of any bankruptcy proceedings concerning his builder. There is no evidence that the bankruptcy petition was filed on or before the assessment date.

The Taxpayer alleged that Certain builders' liens were filed against the subject property and that these liens adversely impacted actual or fair market value. (E2:2). The Taxpayer testified that each of the liens listed were filed after the assessment date.

The Taxpayer has failed to adduce any evidence quantifying the impact on actual or fair market value of any of the issues he raised. The Taxpayer has failed to adduce any evidence that the Board's decision was unreasonable or arbitrary. The Board's decision must accordingly be affirmed.

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 2003 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 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. The assessment date at issue in this appeal is January 1, 2003. Neb. Rev. Stat. §77-1301 (Reissue 2003).
6. The Taxpayer has failed to adduce clear and convincing evidence that the Board's decision was either unreasonable or arbitrary. The Board's decision must accordingly be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Douglas County Board of Equalization's Order setting the assessed value of the subject property for tax year 2003 is affirmed.

2. The Taxpayer's real property legally described as Lot 17, Centennial Addition, more commonly known as 1362 South 196th Street, Douglas County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$ 7,200
Improvements	\$192,800
Total	\$200,000

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 Douglas County Treasurer, and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).

5. This decision shall only be applicable to tax year 2003.

IT IS SO ORDERED.

I certify that Commissioner Hans made and entered the above and foregoing Findings and Orders in this appeal on the 9th day of June, 2004. Commissioner Lore dissented and would have granted some relief. The Findings, *Conclusions* and Order were, however, approved and confirmed by Commissioners 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 9th day of June, 2004.

SEAL



Wm. R. Wickersham
Wm. R. Wickersham, Chair

