

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

RUSSELL A. MEYER,)	
)	
Appellant,)	CASE NO. 03A-24
)	03A-25
vs.)	
)	
FRANKLIN COUNTY BOARD OF)	FINDINGS AND
EQUALIZATION,)	FINAL ORDER
)	
Appellee.)	

Appearances:

For the Appellant: Ron Meyer
30 Lillian Lane
Doniphan, NE 68832

For the Appellee: Vernon Duncan, Esq.
P.O. Box 207
Franklin, NE 68939

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

**I.
STATEMENT OF THE CASE**

Russell A. Meyer owns two tracts of land. The property which is the subject of the appeal in Case Number 03A-24 is a 137.07-acre tract of land legally described as the SW $\frac{1}{4}$ of Section 29, Township 2, Range 13, in Franklin County, Nebraska. (E5:9). There are no improvements on this tract of land. The property which is the subject of the appeal in Case Number 03A-25 is a 306.11-acre tract of land legally described as the E $\frac{1}{2}$ of Section 30, Township 2, Range 13, in Franklin County, Nebraska. (E5:11 - 12). There is a single-family residence with 1,130 square feet of above-grade living area. The improvements were erected in

1900. (E5:13). Ron Meyer ("the Taxpayer") is Russell Meyer's father. The Taxpayer paid \$225,000 for the two tracts of land on March 12, 2003. (E4:6).

Agricultural and horticultural real property is to be valued at 80% of actual or fair market value. Non-agricultural real property is to be valued at 100% of actual or fair market value. Neb. Rev. Stat. §77-201(Reissue 2003). The Franklin County Assessor ("the Assessor") determined that the assessed value of the subject property in Case Number 03A-24 was \$56,250 as of the January 1, 2003, assessment date. (E1). The Taxpayer timely filed a protest of that determination and alleged that 74.50% of the actual or fair market value of the property was \$53,700. (E1:1). The Franklin County Board of Equalization ("the Board") denied the protest. (E1). The Assessor determined that the assessed value of the subject property in Case Number 03A-25 was \$150,800 as of the assessment date. (E2). Ron Meyer, timely filed a protest of that determination and alleged that 78.7% of the actual or fair market value of this property was \$115,050 as of the assessment date. (E2). The Board denied the protest. (E2).

The Taxpayer appealed each of the Board's decisions on August 15, 2004. The Commission served a Notice in Lieu of Summons on the Board on August 26, 2003. The Board answered the appeals out of time but without objection from the Taxpayer on

January 12, 2004. The Commission consolidated these appeals for purpose of hearing on April 9, 2004, and issued an Order for Hearing and Notice of Hearing to each of the Parties on the same date. An Affidavit of Service in the Commission's records establishes that a copy of each of the Orders and a copy of the Notice of Hearing 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 Kearney, Buffalo County, Nebraska, on June 29, 2004. The Taxpayer appeared personally at the hearing. The Board appeared through Vernon Duncan, Esq., Deputy Franklin County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds 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 paid \$225,000 for the two tracts of land which are the subject of these appeals on March 12, 2003, in an arm's-length transaction. (E4:6).
2. The Taxpayer testified that his requested value for the tract of land in Case Number 03A-24 (\$53,700), was 74.5% of price paid for the land component of the subject property.
3. The Taxpayer testified that his requested value for the tract of land in Case Number 03A-25 (\$115,050), was 78.7% of the price paid for the land component of the subject property.

4. The Taxpayer adduced no other evidence of actual or fair market value.

**V.
ANALYSIS**

The Taxpayer testified that his opinion of assessed value averaged 79% of the price paid for the land component of the subject property on March 12, 2003. The purchase price paid for real property may be considered in determining the actual value. The purchase price alone, however, is not determinative of actual or fair market value. *Forney v. Box Butte County Bd. of Equal.*, 7 Neb.App. 417, 424, 582 N.W.2D 631, 637, (1998). The subject property was purchased in a negotiated sale following a failed auction. The Assessor testified that there were elements of a distressed sale, although those elements did not prevent her from characterizing the transaction as an arm's-length sale. The Taxpayer's evidence of price paid for the subject property three-months after the assessment date under these circumstances is not determinative of actual or fair market value as of the assessment date in this appeal.

The Taxpayer testified that the actual or fair market value of his property was adversely impacted by extensive infestation of cheat grass and musk thistle. The Taxpayer failed to adduce any evidence quantifying the impact of these infestations on actual or fair market value other than his purchase price.

The Taxpayer adduced no evidence of the price paid for comparable properties. The Taxpayer adduced no evidence of assessed values of comparable properties. The Taxpayer adduced no other evidence of actual or fair market value other than the price paid for the subject property.

The Board adduced the Assessor's testimony regarding the valuation methodology for agricultural land in Franklin County. The Assessor testified that the subject property had been valued using the same techniques and information used to value all other all other agricultural and horticultural real property in Franklin County for the year 2003. The Assessor further testified that she had no knowledge of unique characteristics of the subject property differentiating it from other agricultural and horticultural land in Franklin County.

The Taxpayer whose only evidence of actual or fair market value amounts to a mere difference of opinion fails to meet his burden of proof, unless that Taxpayer also adduces clear and convincing evidence (1) that his assessed value is grossly excessive when compared to assessed values of other similar property; and (2) the assessed value for his property is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment. *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).

The Taxpayer has failed to meet the burden of proof imposed on him by law. The Board's decisions 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 purchase price paid for real property may be considered in determining the actual value. The purchase price alone, however, is not determinative of actual or fair market value. *Forney v. Box Butte County Bd. of Equal.*, 7 Neb.App. 417, 424, 582 N.W.2D 631, 637, (1998).
6. The Taxpayer whose only evidence of actual or fair market value amounts to a mere difference of opinion fails to meet his burden of proof, unless that Taxpayer also adduces clear and convincing evidence: (1) that his assessed value is grossly excessive when compared to assessed values of other similar property; and (2) that the assessed value for his property is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment. *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).

7. The Taxpayer has failed to adduce clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Taxpayer has also failed to adduce clear and convincing evidence that the Board's determination of value was unreasonable.
8. The Board's decisions must accordingly be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Franklin County Board of Equalization's Orders setting the assessed value of the subject property for tax year 2003 are affirmed.
2. The Taxpayer's real property in Case Number 03A-24, legally described as the SW $\frac{1}{4}$, Section 29, Township 2, Range 13, Franklin County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$ 56,250
Improvements	\$ -0-
Total	\$ 56,250
3. The Taxpayer's real property in Case Number 03A-25, legally described as the E $\frac{1}{2}$ of Section 30, Township 2, Range 13, Franklin County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$144,090
Improvements	\$ 6,710
Total	\$150,800

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 Franklin County Treasurer, and the Franklin County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 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 I made and entered the above and foregoing Findings and Orders in this appeal on the 30th day of June, 2004. The same were approved and confirmed by Commissioners Hans, Lore, and Reynolds 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 1st day of July, 2004.

SEAL

Wm. R. Wickersham, Chair