

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

BRUCE A. CALLIES and DENISE D. )	)	
CALLIES, )	)	
Appellants, )	)	CASE NO. 04R-28
vs. )	)	
LANCASTER COUNTY BOARD OF )	)	FINDINGS AND FINAL ORDER
EQUALIZATION, )	)	AFFIRMING DECISION OF
Appellee. )	)	COUNTY BOARD

Filed February 10, 2005

Appearances:

For the Appellant: Bruce A. Callies  
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Lincoln, NE 68526

For the Appellee: Michael E. Thew, Esq.  
Chief Deputy, Civil Division  
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Before: Commissioners Hans, Lore, Reynolds, and Wickersham.

**I.  
STATEMENT OF THE CASE**

Bruce A. Callies and Denise D. Callies own a 5-acre tract of land legally described as Lot 12, NW¼ of Section 36, Township 9, Range 7, Lancaster County, Nebraska. (E19:1). The tract of land is now improved with a single-family residence but was vacant as of the January 1, 2004 assessment date.

The Lancaster County Assessor ("the Assessor") determined that the subject property's actual or fair market value was \$75,000 as of the January 1, 2004, assessment date. (E1). Bruce

A. Callies ("the Taxpayer") timely protested that determination and requested an equalized value of \$26,000. (E14:16). The Lancaster County Board of Equalization ("the Board") denied the protest. (E1).

The Taxpayer appealed the Board's decision on August 13, 2004. The Commission served a Notice in Lieu of Summons on the Board on August 17, 2004, which the Board answered on August 31, 2004. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on November 23, 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 February 8, 2005. The Taxpayer appeared personally at the hearing. The Board appeared through Michael E. Thew, Esq., Chief Deputy, Civil Division, Lancaster County Attorneys Office. 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 and equalization 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) (Cum. Supp. 2004)). 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 \$32,500 for the subject property was based in large measure on the Taxpayer's appraisal and purchase price. (E4).

2. The price paid to the Taxpayer's father-in-law for the subject property (\$32,500), from the record before the Commission, did not represent actual or fair market value.

**V.  
ANALYSIS**

**A.  
ACTUAL OR FAIR MARKET VALUE**

The Taxpayer alleges that the subject property's assessed value exceeds actual or fair market value and that the assessed value is not equalized with comparable properties.

The Taxpayer testified that in his opinion the subject property's actual or fair market value was \$32,500 as of the assessment date. An owner who is familiar with his property and knows its worth is permitted to testify as to its value. *US Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).

The Taxpayer adduced a "fee" appraisal for the subject property with an effective date of August 29, 2003. (E4). Under professionally accepted mass appraisal methods 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*, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, p. 76.

The Taxpayer's Appraisal does not include the Cost Approach or the Income Approach. (E4:1). The opinion of value expressed in the Taxpayer's Appraisal is exclusively based on the Sales Comparison Approach using three "comparable" sales. (E4:4). Two of the three sales used are located 13 miles or more south of the subject property, and one of those sales is from Gage County. (E4:4). The uncontroverted evidence establishes that rural residential acreages 13 or more miles south of the subject property would sell for less than rural residential acreages in the neighborhood of the subject property. The Taxpayer's Appraiser made a locational adjustment for the sale in Firth, but made no locational adjustment for the Gage County sale. (E4:4). The uncontroverted evidence also establishes that rural residential acreages in Lancaster County are in high demand. (E4:4). A paired sale analysis for sales between October 17, 2000, and January 27, 2004, establishes that prices paid for rural residential acreages located throughout Lancaster County are increasing between 11% and 31%. (E14:46 - 48). The sales referenced in the Taxpayer's Appraisal were all dated 13-months prior to the assessment date, and one year prior to the effective date of the appraisal. (E4:4). The Taxpayer's Appraiser,

however, made no adjustments for the date of sale. (E4:4). The Board's referee indicated that the sales used in the Taxpayer's Appraisal (E4; E14: 31 - 41) "are not representative of the subject market area. The sales stated on the enclosed sales override form indicate a stronger market which supports the value stated by the assessor." (E14:30). The Taxpayer's Appraisal is neither clear nor convincing evidence of actual or fair market value. This exhibit also forms a substantial part of the basis of the Taxpayer's opinion of value. To the extent the Taxpayer's opinion of actual or fair market value is based on that appraisal his opinion is neither clear nor convincing evidence of actual or fair market value.

The Taxpayer also offered evidence of assessed values of "comparable" properties in support of his opinion of value. The Taxpayer's "comparables" found at Exhibits 6, 7, 8, 9, and 11 are valued using "special valuation" pursuant to Neb. Rev. Stat. §77-1344, *et seq.* (Cum. Supp. 2004). Special valuation is defined as the value that the land would have for agricultural or horticultural purposes without regard to the actual value the land would have for other purposes or uses. Neb. Rev. Stat. §77-1343 (6) (Cum. Supp. 2004). The Taxpayer did not apply for "special valuation" for his property, therefore his property was valued at 100% of actual or fair market value. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004). The "special value" assessed values

for the land component of those properties found in Exhibits 6, 7, 8, 9, and 11 do not establish the actual or fair market value of the subject property.

The Taxpayer also alleges that the costs of removing old grain bins and other improvements associated with previous use of the subject property as a feedlot adversely impacts actual or fair market value. The Board alleges that the presence of mature trees enhances actual or fair market value. Neither Party, however, adduced any evidence quantifying the impact on actual or fair market value of either fact.

The burden of persuasion imposed on the complaining taxpayer, however, is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to 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. *US Ecology, supra.*

Finally, the Taxpayer takes issue with the Board's Appraisal. (E18). The Board's Appraisal was dated January 4, 2005, and was prepared for the hearing before the Commission. (E18:6). This appraisal relies heavily on the Sales Comparison Approach and some of the sales used by the Board's Appraiser required significant adjustments. (E18: 2 - 3). The Taxpayer's

Appraiser's sales also required significant adjustments. (E4:4). The Taxpayer's concerns regarding the size of adjustments in the Board's appraisal must be applied with equal weight to the Taxpayer's appraisal. A taxpayer who only produces evidence that is aimed at discrediting the assessor's methods fails to meet his or her burden of proof. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

Finally, the Board also adduced the testimony of another appraiser employed by the Assessor's Office testified that in his opinion the actual or fair market value of the subject property was \$75,000 as of the assessment date.

**B.**  
**EQUALIZATION OF ASSESSED VALUE**

The Taxpayer also alleges that the subject property's assessed value was not equalized with other land in the same area. 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. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. However, 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). The Taxpayer must also adduce clear and convincing evidence that the assessment was not the result of an error of judgment but was a deliberate and intentional discrimination systematically applied. *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984).

The Taxpayer admitted that Exhibits 6, 7, 8, 9, and 11 do not establish a lack of equalization. The Taxpayer's only other evidence concerning equalization are the assessed values shown in Exhibits 5 and 10. The property described in Exhibit 5 is one acre in size and has a per acre assessed value of \$25,000 while the subject property has a per acre assessed value of \$15,000. The Taxpayer adduced no evidence of actual or fair market value for this parcel. There level of assessment for this property cannot be determined. Exhibit 5 does not therefore establish a lack of equalization. (E28:1).

The property described in Exhibit 10 is 4.44 acres in size and has an assessed value of \$17,000 per acre. (E33:1). This property has a higher per acre assessed value than the subject property which is attributable to its smaller size. The Taxpayer

adduced no evidence of actual or fair market value for this property. The level of assessment for this parcel cannot be determined. Exhibit 10 does not therefore establish a lack of equalization.

**C.**  
**CONCLUSION**

The Taxpayer's burden is to adduce clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary. In satisfying this burden the Taxpayer must adduce clear and convincing evidence of the subject property's actual or fair market value. The Taxpayer alleges that his Appraisal establishes value. The Taxpayer's Appraisal is not clear and convincing evidence of value. The Taxpayer also alleges that the price paid for the subject property establishes value. The purchase price of property may be taken into consideration in determining actual value. The purchase price, however, must be considered together with all other relevant elements pertaining to value. The price paid, standing alone, is not conclusive 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). The Taxpayer's only other evidence of value is his opinion. The Taxpayer's opinion of value is based in large measure on this evidence. The Taxpayer's evidence, taken as a whole, fails to reach the level

of clear and convincing evidence of value. In the absence of clear and convincing evidence of value the Board's decision to deny the Taxpayer's protest must 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) (Cum. Supp. 2004).
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 Taxpayer has failed to adduce sufficient clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Board's decision must accordingly be affirmed.

**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 2004 is affirmed.
2. The Taxpayer's real property legally described as Lot 12, NW¼ of Section 36, Township 9, Range 7, Lancaster County, Nebraska, shall be valued as follows for tax year 2004:

Land	\$75,000
Improvements	\$ -0-
Total	\$75,000

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 Lancaster County Treasurer, and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004).
5. This decision shall only be applicable to tax year 2004.
6. Each Party is to bear its own costs in this matter.

**IT IS SO ORDERED.**

Dated this 10<sup>th</sup> day of February, 2005.

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*Robert L. Hans, Commissioner*

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*Susan S. Lore, Commissioner*

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*Mark P. Reynolds, Vice-Chair*

**SEAL**

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*Wm. R. Wickersham, Chair*

**ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE APPEAL MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW. SEE NEB. REV. STAT. §77-5019 (REISSUE 2003). IF A PETITION IS NOT TIMELY FILED, THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.**