

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

CHARLES R. CLATTERBUCK and)
LINDA CLATTERBUCK,)

Appellants,)

vs.)

CASS COUNTY BOARD OF)
EQUALIZATION,)

Appellee.

CASE NO. 04R-40

FINDINGS AND FINAL ORDER
GRANTING RELIEF

Appearances:

For the Appellant: Charles R. Clatterbuck
1718 Hillcrest Drive
Bellevue, NE 68005

For the Appellee: Nathan B. Cox, Esq.
Cass County Attorney
346 Main Street
Plattsmouth, NE 68048-1964

Before: Commissioners Hans, Lore, and Reynolds.

I.

STATEMENT OF THE CASE

Charles R. Clatterbuck and Linda Clatterbuck own a vacant residential lot which is 16,306 square feet in size. The tract of land is legally described as Lot 128, W½ of Section 6, Township 12, Range 1, Iron Horse Development, Cass County, Nebraska. (E11:1).

Charles R. Clatterbuck ("the Taxpayer") protested the proposed assessed value of \$113,682 as of the January 1, 2004, assessment date. (E1). The Taxpayer timely protested that determination and alleged that the subject property's actual or

fair market value was \$68,209. (E10:2). The Cass County Board of Equalization ("the Board") granted the protest in part and determined that the subject property's actual or fair market value was \$104,950 as of the assessment date. (E1).

The Taxpayer appealed the Board's decision on August 17, 2004. The Commission served a Notice in Lieu of Summons on the Board on August 18, 2004, which the Board answered on August 26, 2004. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on November 8, 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 January 19, 2005. The Taxpayer appeared personally at the hearing. The Board appeared through Nathan B. Cox, Esq., the Cass County Attorney. Commissioners Hans, Lore, and Reynolds heard the appeal. Commissioner Wickersham was excused from the proceedings. Commissioner Reynolds served as the presiding officer.

The Commission afforded each of the Parties the opportunity to present evidence and argument. The Taxpayer testified on his behalf and rested. The Board rested without adducing any testimony.

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 acquired the subject property in 2000 for \$104,950. (E10:1). The property was valued for the purposes of real property taxation in the same amount as of January 1, 2004.
2. There is no evidence that residential real estate market values in the Iron Horse development have increased or decreased between 2000 and 2004.
3. There is no evidence in the record supporting a Developer's Agreement which would impact assessed values within the Iron Horse development.

**V.
ANALYSIS**

The Taxpayer raised three issues in his appeal: (1) the actual or fair market value of the subject property; (2) whether the assessed value of the subject property was equalized with comparable properties; and (3) whether the Taxpayer is entitled to a "developer's agreement" which would reduce the assessed value of the subject property for tax year 2004.

The Taxpayer acquired the subject property in 2000 for \$104,950. (E10:1). The property is located in an upscale residential development with most lots having views of a golf

course and a lake. Some lots on a "ridge" have a view of the Platte River and Mahoney State Park. The Taxpayer alleges that a transaction described in Exhibit 8 supports his contention that the subject property is overvalued. Exhibit 8 is a purchase agreement with purchase contingent on a number of conditions. The record is silent as to whether the conditions were satisfied or whether an actual purchase occurred. There is therefore no evidence that the subject property's assessed value exceeded actual or fair market value.

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). Where equalization is lacking the taxpayer has the right to have his assessment reduced to the percentage of that value at

which others are taxed even though this is a departure from the requirement of statute. *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984).

The Taxpayer purchased a second lot within the Iron Horse development in February, 2004, for \$104,950. (E20). The assessed value of this property was \$49,975 as of the assessment date. (E20:2). The Board adduced Exhibits 19 and 21 which also establish that assessed values do not reflect actual or fair market value. The Taxpayer alleges that this discrepancy is the result of a Developer Agreement with the County. The "Development Approach" is "a method of valuing residential, industrial, or recreational land to be used for subdivision development. The analysis is typically used in feasibility studies when comparables sales are scarce. The value of the land is estimated as the present value of the net cash flows considering absorption rates, development period, and estimated sales prices of individual lots." *Income Property Valuation*, Dearborn Financial Publishing Press, 1994, p. 564.

The Taxpayer adduced no evidence establishing the existence of a Developer's Agreement. The Taxpayer adduced no evidence of the appropriate methodology or factors to be considered in calculating the development approach. Further, the Taxpayer admitted that although he is a member of Iron Horse, L.L.C., he

is not a developer of the residential development. The Taxpayer's request for a developer's discount must therefore be denied.

The Board rested without adducing any testimonial evidence. The record is therefore silent as to the reasons for the discrepancies between actual or fair market value for comparable properties. Under these circumstances, the failure to value residential real property uniformly and proportionately constitutes a violation of the equalization clause. The Taxpayer is therefore entitled to relief.

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 adduced clear and convincing evidence that the Board's decision was incorrect and both unreasonable and arbitrary.
6. The Board's decision must be accordingly be vacated and reversed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Cass County Board of Equalization's Order setting the assessed value of the subject property for tax year 2004 is vacated and reversed.

2. The Taxpayer's real property legally described as Lot 128, W½ of Section 6, Township 12, Range 10, Iron Horse, Cass County, Nebraska, shall be valued as follows for tax year 2004:

Land	\$49,975
Improvements	\$ -0-
Total	\$49,975

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 Cass County Treasurer, and the Cass 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.

I certify that Commissioner Hans made and entered the above and foregoing Findings and Orders in this appeal on the 19th day of January, 2005. The same were approved and confirmed by Commissioners Lore and Reynolds and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Cum. Supp. 2004).

Signed and sealed this 20th day of January, 2005.



SEAL

Mark P. Reynolds, Vice-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 IN NEBRASKA REVISED STATUTE §77-5019 (REISSUE 2003). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.

