

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

RALPH A. RIEDEL,)	
Appellant,)	CASE NO. 04R-95
vs.)	
CASS COUNTY BOARD OF)	FINDINGS AND FINAL ORDER
EQUALIZATION,)	GRANTING RELIEF
Appellee.)	

Appearances:

For the Appellant: Ralph A. Riedel
12712 Sunny Slope Drive
Plattsmouth, NE 68048

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

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

**I.
STATEMENT OF THE CASE**

Ralph A. Riedel and Geonna B. McCarl own a 2.75 acre tract of land legally described as Lot 17, Section 31, Township 12, Range 14, Golden Hill, Cass County, Nebraska. (E12:1). The tract of land is improved with a single-family residence with 1,027 square feet of above-grade finished living area built in 2001 ("the subject property"). (E13:5).

Ralph A. Riedel ("the Taxpayer") timely protested the proposed January 1, 2004 assessed value of \$89,589. (E1). The Cass County Board of Equalization ("the Board") denied the protest. (E1).

The Taxpayer appealed the Board's decision on August 23, 2004. The Commission served a Notice in Lieu of Summons on the Board on September 2, 2004, which the Board answered on September 7, 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 20, 2005. The Taxpayer appeared personally at the hearing. The Board appeared through Nathan B. Cox, the Cass County Attorney. 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. X77-5016(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 total investment in the subject property, exclusive of "sweat equity," is \$62,466.54. The Taxpayer testified that in his opinion, the total cost incurred in developing the subject property was \$79,375. (E1).
 2. The Taxpayer alleged that the Cass County Assessor had failed to inspect the interior of the subject property. The

Assessor's Office did make an inspection on December 8, 2004.

3. The Taxpayer adduced opinion testimony of value based on the Cost Approach, but adduced no evidence from which an indication of value under the Sales Comparison or Income Approaches could be used to value the subject property.

V. ANALYSIS

The Taxpayer alleges that the subject property is overvalued and that the actual or fair market value of the subject property is \$79,375. (E1: E12:2). The Taxpayer provided Exhibit 4, which purports to include all costs of construction for the subject property. The itemized list, however, fails to include any value for the Taxpayer's in kind construction labor, design or services as the sole contractor, or the costs of construction permits and costs for the services of general or subcontractors. The Taxpayer testified that in his opinion the total cost of development of the subject property including the Taxpayer's estimates of additional costs was \$79,135. (E1).

The Taxpayer alleges that pursuant to *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982), the Commission should determine that cost equals value. *Potts* proposes that under some circumstances the purchase price paid for property listed for sale on the open market may

represent market value. The subject property was never listed for sale on the open market, and *Potts* does not hold that the costs of construction equal market value. Furthermore, while it is true that the purchase price of property may be taken into consideration in determining the actual value of real property, cost of materials 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). Furthermore, the Taxpayer is not and has not been in the construction business. Therefore his opinion of the costs of construction is neither clear nor convincing evidence of value.

The Taxpayer also alleges that the Assessor failed to inspect the interior of the subject property and that this fact establishes that the Board's decision was incorrect, and both unreasonable or arbitrary. The Assessor and an appraiser employed by the Assessor finally inspected the subject property on December 8, 2004. Based on this inspection, the Assessor proposed valuing the subject property in the amount of \$78,086 using Cost Factors dated June 30, 2000. (E14:2). The uncontroverted testimony establishes that all other suburban residential real property in the Golden Hill Subdivision of Cass County were initially valued using the same June 30, 2000, Cost Factors; that costs of construction for residential real property

in Cass County increased between June 30, 2000, and January 1, 2004; and that the initial assessed values in Golden Hill Subdivision were increased by 8.32% pursuant to a Commission Order dated May 14, 2004. The uncontroverted evidence also establishes the same percentage increase had to be applied to the Cost Approach value for the subject property shown on Exhibit 14, page 2, in order to preserve uniform and proportionate assessments. The evidence also establishes that the adjustment was necessary in order to bring the estimate of value using the June 30, 2000, Cost Factors to market value as of the January 1, 2004, assessment date.

The Taxpayer adduced no evidence of sales of comparable properties, and no evidence from which an indication of value could be derived under the Income Approach. The Taxpayer alleges that such evidence cannot be adduced due to the unique nature of the residential improvements. The Taxpayer testified that his original intent was to build the structure as a four-car garage, then changed his mind and converted the structure to a residence. The Taxpayer further testified that he intends to build a new residence on the land, and "strip out" the existing structure and convert it to a four-car garage.

The cost approach usually works best for newer improvements, because construction costs are easier to estimate and there is less depreciation. This approach is especially useful for

appraisal of properties for which sales and income data are scarce. *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 128. The Taxpayer adduced evidence of the cost of materials used to construct the improvements on the subject property. The Taxpayer failed to adduce evidence other than an opinion that the costs of architectural plans, building permits and fees, labor, or any evidence of the value of the services of general and subcontractors performed "in kind" by the Taxpayer could add between 30% and 50% of the costs of materials. The Taxpayer therefore offered opinion testimony that the actual or fair market value of the subject property was \$79,375 based on his estimates. The burden of persuasion imposed on the complaining taxpayer 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, Inc. v. Boyd County Bd of Equalization, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).

The Board's evidence, however, establishes that after inspection, the actual or fair market value of the subject property was \$84,583. (E14:2). Based on this evidence, the

Board's decision was incorrect, and both unreasonable and arbitrary, and must be vacated and reversed.

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 Board's evidence establishes that the subject property's actual or fair market value was \$84,583. (E14`2). This evidence establishes that the Board's decision was incorrect, unreasonable and arbitrary. The Board's decision must 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 17, Section 31, Township 12, Range 14, Golden Hill, Cass County, Nebraska, more commonly known as 12712 Sunny Slope Drive, shall be valued as follows for tax year 2004:

Land	\$31,819
Improvements	\$52,764
Total	\$84,583

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 Lore made and entered the above and foregoing Findings and Orders in this appeal on the 20t' day of January, 2005. Commissioner Hans dissented only to the extent that he would have granted the Taxpayer the relief originally requested. Commissioners Reynolds and Wickersham, however, approved and confirmed the Findings and Order as entered by Commissioner Lore. The same 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

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