

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

JOHN W. DECAMP,)	
)	
Appellant,)	CASE NO. 04C-172
)	
vs.)	
)	
KNOX COUNTY BOARD OF)	FINDINGS AND FINAL ORDER
EQUALIZATION,)	AFFIRMING DECISION OF THE
)	COUNTY BOARD OF EQUALIZATION
)	
Appellee.)	

SUMMARY

John W. DeCamp, Esq. ("the Taxpayer") owns an improved tract of commercial land. The property is used as a hotel, laundry, steakhouse, lounge, ballroom and apartment. These businesses are operated as the Blackhorse Inn and Drover's Steakhouse in the Village of Creighton, Knox County, Nebraska. The Taxpayer protested the Knox County Assessor's ("the Assessor's") proposed 2004 value for the subject property to the Knox County Board of Equalization ("the Board"). The Board granted the Taxpayer protest but only in part, and the Taxpayer appealed.

**I.
ISSUES**

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

II.
STATEMENT OF THE CASE

The Taxpayer owns a tract of land generally described as the W¹/₂ of Lots 12 and 13, Carlin 3rd Addition, City of Creighton, Knox County, Nebraska. The land is improved with a building with 16,451 square feet of gross building area. (E5:10). The Taxpayer acquired the subject property at a Master Commissioner's Sale. (E5:45 - 46). The District Court of Knox County confirmed the sale in the amount of \$90,000 on August 6, 2002. (E5:46).

The Assessor determined that the subject property's actual or fair market value was \$427,800 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 \$90,000. (E1). The Board granted the protest in part and found that the subject property's actual or fair market value was \$295,095 as of the January 1, 2004, assessment date.

The Taxpayer appealed the Board's decision on August 24, 2004. The Commission served a Notice in Lieu of Summons on the Board which the Board answered. The Commission issued an Amended Order for Hearing and Notice of Hearing and served a copy of each document 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 December 13, 2005. The Taxpayer appeared personally at the

hearing. The Board appeared through John Thomas, Esq., the Knox County Attorney. Commissioners Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer. Commissioner Hans was excused from the proceedings.

The Board moved to dismiss the Taxpayer's appeal alleging that the Taxpayer had conveyed all right, title, and interest in the property, and that therefore the Taxpayer was no longer a real party in interest. The Taxpayer moved that the proceedings be continued to allow the buyers to be present if necessary to continue prosecution of the appeal. The Commission afforded each of the Parties the opportunity to present evidence and argument on each motion. State law provides that the Commission shall not dismiss an appeal when the property is transferred during the pendency of the appeal. Neb. Rev. Stat. §77-5016.09 (Cum. Supp. 2004). Furthermore, state law provides that a refund is paid to the person entitled to the refund. Neb. Rev. Stat. §77-1736.06 (Reissue 2003). The record establishes that the Taxpayer paid the 2004 real property taxes and, therefore if successful in this appeal, he would be entitled to a refund. The Taxpayer accordingly is a real party in interest in this proceeding. The Commission therefore denied the Board's Motion to Dismiss and denied the Taxpayer's motion to continue as moot.

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 either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Supp. 2005). 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 value of the land component (\$8,240) is not at issue.
2. The Taxpayer acquired the real property for \$90,000 cash plus payment of taxes which amounted to more than \$30,000, in August, 2002, as part of a distressed sale. (E5:46). That purchase was not an arm's-length transaction.
3. There is no clear and convincing evidence that the allocated price paid for the real property in December, 2005,

\$182,554, as corrected, represented actual or fair market value as of the assessment date.

4. The property is a unique property with no "comparable" properties located within Knox County or within the immediately surrounding counties.

V. ANALYSIS

The Taxpayer's evidence of value consists of the price paid for the subject property in 2002 at the Master Commissioner's Sale; the owner's opinion of value as of the assessment date; and the allocated price paid for the subject property in December, 2005.

The price paid for the property in 2002 does not rise to the level of clear and convincing evidence of value. "It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value." *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2D 631, 637, (1998).

The uncontroverted evidence establishes that the 2002 sale was part of a bankruptcy proceeding, and that the successful buyer was required to pay 15% of the winning bid on the day and at the time of the auction. An arm's-length transaction is defined as one between unrelated parties under no duress. *The Dictionary of Real Estate Appraisal*, 12th Ed., Appraisal Institute, 2002, p. 150. If a transaction is made under duress, then the price paid may not reflect the property's value in the ordinary course of trade. Here, the sale of the subject property in August, 2002, was under duress (liquidation after foreclosure by a bank), and there is no clear and convincing evidence that the price paid represented actual or fair market value.

The Taxpayer also adduced as evidence his opinion of value. 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 testified that in his opinion the fair market value of the subject property as of January 1, 2004, was between \$150,000 and \$170,000. The Taxpayer's opinion testimony rests on the price paid for the subject property in 2002 plus repairs and improvements. There is no clear and convincing evidence that the price paid for the property in 2002 represented actual or fair market value or the contribution to fair market value of repairs or improvements.

The Taxpayer sold the subject property and associated personal property in December, 2005, for \$290,000. (E14:39). The parties to the sale allocated \$182,554 of the purchase price to real property, with the remaining amount, \$107,446, attributed to personal property and inventory (liquor, food, etc.). (E14:39). The Taxpayer adduced no evidence correlating the allocated price paid for the real property in December, 2005, to the subject property's actual or fair market value as of January 1, 2004. Furthermore, there is no clear and convincing evidence that 37% of the purchase price paid represented the actual or fair market value of the personal property involved in the sale. If this allocation is incorrect, then the allocated price paid for the real property is also incorrect. The allocated price paid for the subject property in December, 2005, does not rise to the level of clear and convincing evidence of actual or fair market value as of the January 1, 2004, assessment date.

The Taxpayer adduced no clear and convincing evidence of value during the proceedings before the Board. The Board's evidence at the hearing before the Commission included the Assessor's testimony. The Assessor testified that based on her education, training, and experience, the subject property's actual or fair market value was \$295,095 as of the assessment date. The Assessor's opinion is based on the Cost Approach, one of the three professionally accepted mass appraisal methodologies

recognized in Neb. Rev. Stat. §77-112 (Reissue 2003). The use of the cost approach is most applicable where, as here, no comparable sales were found allowing the use of the sales comparison approach and the lack of information from which an indicated value could be determined from the income approach. *The Appraisal of Real Estate*, 12th Ed., Appraisal Institute, 2001, p. 529. The Assessor testified that she valued the subject property in the same manner as all other commercial property in the Village of Creighton for tax year 2004, but that she attributed additional depreciation to account for the subject property's unique nature. The Taxpayer adduced no evidence to establish either that the Assessor's methodology or the Board's determination of value was incorrect, or unreasonable or arbitrary.

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) (Supp. 2005).
3. The Board is presumed to have faithfully performed its official duties. The Board is also presumed to have acted

upon sufficient competent evidence to justify its decisions. 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 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 Knox County Board of Equalization's Order setting the subject property's 2004 assessed value is affirmed.
2. The Taxpayer's real property generally described as the W¹/₂ of Lots 12 and 13, Carlin 3rd Addition, in the City of Creighton, Knox County, Nebraska, shall be valued as follows for tax year 2004:

Land	\$ 8,240
Improvements	\$286,855
Total	\$295,095
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 Knox County Treasurer, and the Knox County Assessor, pursuant to Neb. Rev. Stat. §77-5016(9) (Supp. 2005).
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 16th day of December, 2005.

Susan S. Lore, Commissioner

Mark P. Reynolds, Vice-Chair

SEAL

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 (Supp. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.