

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

WESLEY J. MEINTS and SANDRA S. )  
MEINTS, )

Appellants, )

vs. )

GAGE COUNTY BOARD OF )  
EQUALIZATION, )

Appellee. )

CASE NO. 04R-127

FINDINGS AND FINAL ORDER  
AFFIRMING BOARD'S DECISION

Appearances:

For the Appellant: Sandra S. Meints  
P.O. Box 158  
Pickrell, NE 68422

For the Appellee: Richard T. Smith, Esq.  
Gage County Attorney  
612 Grant Street, Room 21  
Beatrice, NE 68310

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

I.

**STATEMENT OF THE CASE**

Wesley J. Meints and Sandra S. Meints own a 21,000 square foot tract of land legally described as Lots 4, 5, and 6, Block 3, Original Town of Pickrell, Gage County, Nebraska. (E13:11). The tract of land is improved with a one-and-a-half story, single-family residence with 2,927 square feet of above-grade finished living area built in 1993. (E13:11). The house has a 2,158 square foot basement, of which 1,782-square feet is finished; a three car garage; and three porches. (E13:11).

The Gage County Assessor determined that the subject property's actual or fair market value was \$246,305 as of the January 1, 2004, assessment date. (E1). Sandra S. Meints, the Taxpayer, timely protested that determination and alleged that the subject property's actual or fair market value was \$187,960. (E1). The Gage County Board of Equalization granted the protest in part and found that the subject property's actual or fair market value was \$238,365 as of the assessment date. (E1).

The Taxpayer timely appealed the Board's decision on August 24, 2004. The Commission served a Notice in Lieu of Summons on the Board on September 7, 2004, which the Board answered on September 20, 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 1, 2005. The Taxpayer appeared personally at the hearing. The Board appeared through Richard T. Smith, Esq., the Gage 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 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. 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 had no opinion of actual or fair market value of the subject property as that phrase is defined under state law.
2. The Taxpayer adduced no evidence of the adjustments necessary to account for differences between the subject property and those offered as "comparables" by the Taxpayer.

**V.**  
**ANALYSIS**

The Taxpayer alleged that the 31% increase in the subject property's assessed value over the prior year's assessed value was excessive and unreasonable. The market value of real property usually changes from year to year. Changes made to the property since the last assessment may also affect market value. Occasionally, the prior assessed value may be shown to be incorrect. For these reasons the prior year's assessed value is not relevant evidence of actual or fair market value in a subsequent year. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988). If the base for calculation of a percentage change is not relevant evidence then any calculation based on it cannot be relevant

evidence. The percentage change in assessed value from year to year is therefore not relevant evidence that the current assessed value is incorrect and either unreasonable or arbitrary.

The Taxpayer also alleged that the subject property's assessed value exceeded actual or fair market value as of the assessment date. (E1). 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, however, had no opinion of actual or fair market value for the subject property.

The Taxpayer did adduce evidence in the form of "Parcel Details" for six single-family residential properties located in the Town of Pickrell which the Taxpayer alleges are "comparable" to the subject property. (E1:2 - E1:7). "Comparable properties" share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation*, <sup>2nd</sup> Ed., International Association of Assessing Officers, 1996, p. 98. When using "comparables" to determine value, similarities and differences between the subject property and the comparables must be recognized. *Id.*, at 103. "Financing terms, market conditions, location, and physical characteristics are items that must be considered when making adjustments . . ." *Id.*, at 98. Most adjustments are for physical characteristics. *Id.*, at 105.

The Taxpayer's exhibits for the "comparable" properties do not include the Property Record Files for those properties as required by the Commission's Rules and Regulations and by the Order for Hearing. Title 442, Neb. Admin. Code, ch. 5, §020.06 (1/05). There is, therefore, no evidence of the quality of construction, style, amenities, functional utility, or physical condition of these properties. The record does establish that the age of these properties ranges from 2-years to 48-years. (E1:7; E1:4). The size of the above-grade finished living area ranges from 1,151-square feet to 2,396-square feet. (E1:5; E1:7). Basement sizes range from 1,151-square feet to 2,396-square feet. (E1:5; E1:7). There is, however, no evidence of the type of finish for any of the basements.

The Taxpayer failed to adduce any evidence of the adjustments necessary to account for the differences between the subject property and the properties offered as "comparables." The subject property's actual or fair market value may be established using assessed values of "comparable" properties. See, e.g., *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998). This methodology, however, requires a taxpayer to demonstrate by clear and convincing evidence that the properties offered as "comparables" are truly comparable and that the assessed values of the properties represent actual or fair market value. *DeBruce*

*Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998); *Westgate Recreation Ass'n v. Papio-Missouri River Natural Resources Dist.*, 250 Neb. 10, 17, 547 N.W.2d 484, 492 (1996). If the "comparable" properties are not truly comparable to the subject property, then the Taxpayer must adduce clear and convincing evidence of the adjustments necessary to render the comparable properties truly comparable to the subject property. Mere assertions that the assessed value of the subject property is wrong and that the assessed values of "comparable" properties are right does not satisfy the burden of adducing clear and convincing evidence of value which is imposed on the complaining taxpayer by judicial decisions and state law.

The Taxpayer also alleged that the subject property's assessed value was not equalized with the assessed values of "comparable" properties. 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, however, has right to relief only where the discrepancy 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's evidence of unadjusted assessed values of properties which are not truly comparable to the subject property does not establish a lack of equalization. The only evidence of undervalued property is one single-family residential property which is the subject of Exhibit 1, page 7. The uncontroverted evidence is that the assessed value of this property was undervalued due to a clerical error. This evidence does not rise to the level of evidence of intentional discrimination.

The Taxpayer has failed to adduce clear and convincing evidence that the Board's valuation decision was incorrect, and either unreasonable or arbitrary. The Taxpayer has also failed to adduce sufficient clear and convincing evidence under the *Kearney Convention Center* standard to support her equalization claim. The Board's decision 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) (Cum. Supp. 2004).
3. The Taxpayer in an equalization appeal must also adduce clear and convincing evidence that the Board's action was a deliberate and intentional discrimination systematically applied. *Kearney Convention Center, supra.*
4. 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).

5. "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).

**VII.  
ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:**

1. The Gage County Board of Equalization's Order setting the subject property's assessed value for tax year 2004 is affirmed.
2. The Taxpayer's real property legally described as Lots 4, 5, and 6, Block 3, Original Town of Pickrell, Gage County, Nebraska, more commonly known as 202 Madison Street, shall be valued as follows for tax year 2004 as determined by the Board:

Land	\$ 6,300
Improvements	\$232,065
Total	\$238,365

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 Gage County Treasurer, and the Gage 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 1st day of February, 2005. I dissented and would have granted the Taxpayer relief by reducing the assessed value of the subject property to 78.39% of actual or fair market value for failure of the Assessor and/or the Board to correct a known error in the assessment of the undervalued property when that correction was possible. Commissioner Hans' Findings and Order were, however, 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 1<sup>st</sup> day of February, 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.