

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

THOMAS H. SIRES,)	
)	
Appellant,)	CASE NO. 03R-199
)	
vs.)	
)	FINDINGS AND
DOUGLAS COUNTY BOARD OF)	FINAL ORDER DISMISSING
EQUALIZATION,)	APPEAL AT CLOSE OF TAXPAYER'S
)	CASE
Appellee.)	

Appearances:

For the Appellant: Thomas H. Sires
1515 South 80th Street
Omaha, NE 68124

For the Appellee: Christine A. Lustgarten, Esq.
Chief Deputy, Civil Division
Douglas County Attorneys Office
909 Civic Center
Omaha, NE 68183

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

**I.
STATEMENT OF THE CASE**

Thomas H, Sires ("the Taxpayer") is one of the owners of a 2.24 acre tract of land located in the City of Omaha, Douglas County, Nebraska. (E22:2). The tract of land is improved with a one-and-one-half-story, single-family residence with 2,402 square feet of above-grade finished living area built in 1941. (E4:1).

The Douglas County Assessor ("the Assessor") determined that the subject property's actual or fair market value was \$549,600 as of the January 1, 2003, assessment date. (E1). The Taxpayer timely filed a protest of that determination and alleged that the

proposed value exceeded actual or fair market value. (E9:1).

The Douglas County Board of Equalization ("the Board") granted the protest in part and determined that the actual or fair market value of the property was \$431,400 as of the assessment date. (E1).

The Taxpayer appealed the Board's decision on August 25, 2004. The Commission served a Notice in Lieu of Summons on the Board on September 16, 2003, which the Board answered out of time but with the Commission's consent on January 8, 2004. The Commission issued an Amended Notice of Hearing to each of the Parties on June 10, 2004. An Affidavit of Service in the Commission's records establishes that a copy of the Amended 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 August 6, 2004. The Taxpayer appeared personally at the hearing. The Board appeared through Christine A. Lustgarten, Esq., Chief Deputy, Civil Division, Douglas County Attorneys Office. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Wickersham served as the presiding officer. The Taxpayer testified that the only issue before the Commission is the value of the land component of the subject property.

The Board, at the conclusion of the Taxpayer's case-in-chief, moved to dismiss the Taxpayer's appeal for failure to satisfy the burden of persuasion.

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. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51)). 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 alleged that the Board's comparables offered as part of the Commission's proceedings are not truly comparable to the subject property.
2. The Taxpayer testified that in his opinion the subject property's actual or fair market value was \$350,000 as of the assessment date.
3. The Taxpayer failed to adduce any evidence of prices paid for comparable properties which might support his opinion of value.
4. The Taxpayer failed to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary.

**V.
ANALYSIS**

The Taxpayer alleged in his protest that the proposed value exceeded actual or fair market value. (E9:1). The Taxpayer testified in his opinion the subject property's actual or fair market value was \$350,000 as of the assessment date. The Taxpayer adduced no evidence of prices paid for comparable

properties. The burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion. *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).

The Assessor's determination of value consisted of two components. The Assessor attributed \$65,000 of the assessed value to the improvement component of the subject property, and \$484,600 for the land component of the subject property. (E1).

The Referee assigned to hear the protest by the Board recommended that half of the land component be deemed "excess land" and the assessed value should therefore be reduced. (E9:2). The Referee's recommendation was based on evidence adduced by the Taxpayer. (E9:2). Copies of the documents received by the Referee were not made a part of the record before the Commission. The Board adopted the recommendation and reduced the value of the land component from \$484,600 to \$366,400. (E1).

The Taxpayer has adduced no evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998).

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) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).
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 burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion. *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).
6. The Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998).
7. The Taxpayer has failed to adduce any evidence that the Board's decision was either incorrect and either unreasonable or arbitrary.
8. The Board's Motion to Dismiss must accordingly be granted.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Board's Motion to Dismiss is granted.

2. The Douglas County Board of Equalization's Order setting the assessed value of the subject property for tax year 2003 is therefore final.
3. The Taxpayer's real property more commonly known as 1515 South 80th Street, in the City of Omaha, Douglas County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Land	\$366,400
Improvements	\$ 65,000
Total	\$431,400
4. Any request for relief by any Party not specifically granted by this order is denied.
5. This decision, if no appeal is filed, shall be certified to the Douglas County Treasurer, and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).
6. This decision shall only be applicable to tax year 2003.

IT IS SO ORDERED.

I certify that Commissioner Hans made and entered the above and foregoing Findings and Orders in this appeal on the 6th day of August, 2004. Commissioners Lore, Reynolds and Wickersham approved and confirmed the findings and order, and those items

are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Reissue 2003).

Signed and sealed this 6th day of August, 2004.

SEAL

Wm. R. Wickersham, Chair