

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

DANIEL R. KNOSP,)	
)	
Appellant,)	CASE NO. 03R-44
)	
vs.)	
)	FINDINGS AND
DODGE COUNTY BOARD OF)	FINAL ORDER
EQUALIZATION,)	
)	
Appellee.)	

Appearances:

For the Appellant: Daniel R. Knosp
3165 West County Road T Blvd
Fremont, NE 68025

For the Appellee: Stacey Hultquist, Esq.
Deputy Dodge County Attorney
P.O. Box 147
Fremont, NE 68026

Before: Commissioners Lore, Reynolds, and Wickersham.

**I.
STATEMENT OF THE CASE**

Daniel R. Knosp ("the Taxpayer") owns a rural residential acreage in Dodge County, Nebraska. The property is legally described as Lot 18, Raymond Bradbury Subdivision, more commonly known as 3165 West County Road "T" Boulevard. (E38:1).

The State Assessing Official for Dodge County determined that the actual or fair market value of the subject property was \$117,585 as of January 1, 2003 ("the assessment date"). (E38:1). The Taxpayer protested that determination of value to the Dodge County Board of Equalization ("the Board"). (E1:2). The Board

denied the protest (E1:1), and the Taxpayer timely filed an appeal of that decision on August 15, 2003. (*Appeal Form*). The Commission served a Notice in Lieu of Summons on the Board on August 25, 2003, which the Board answered on August 27, 2003. The Commission thereafter issued an Order for Hearing and Notice of Hearing, and served a copy of the Order on each of the Parties.

The Commission called the case for a hearing on the merits of the appeals in the City of Lincoln, Lancaster County, Nebraska, on February 23, 2004. Commissioner Hans was excused from the proceedings. The Taxpayer appeared personally at the hearing. The Board appeared through Stacey Hultquist, Esq., Deputy Dodge County Attorney.

The Commission, by comparing the Appeal Form with the Taxpayer's Protest Form (E1:2), determined that the only issue properly before the Commission was the actual or fair market value of the subject property. The Commission concluded that it lacked subject matter jurisdiction over the question of equalization of the subject property with comparable properties in the same subdivision. *Gordman Properties v. Hall Cty. Bd. of Equalization*, 225 Neb. 169, 403 N.W.2d 366 (1987); *Arcadian Fertilizer v. Sarpy Cty. Bd. of Equal.*, 7 Neb.App. 499, 505, 583 N.W.2D 353, 357 (1998). The Board rested without adducing any testimonial evidence.

II.
ISSUES

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

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)(2003 Supp.)). 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.
FINDING OF FACT**

The Commission finds and determines that the Taxpayer, in March 2003, refused to allow the State Assessing Official for Dodge County the opportunity to inspect the subject property for tax year 2003.

**V.
ANALYSIS**

The Taxpayer alleges (1) the purchase price of the subject property represented actual or fair market value of the property as of the assessment date; and (2) the Taxpayer's "comparable" properties support the purchase price as evidence of actual or fair market value. The Taxpayer implicitly alleges that his evidence establishes that the Board's decision was incorrect and either unreasonable and arbitrary, and that the Board's value was unreasonable.

**A.
COST AS EVIDENCE OF ACTUAL OR FAIR MARKET VALUE**

"Actual value" is defined as the "market value of real property in the ordinary course of trade . . . [it] is 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(2003 Supp.).

The purchase price of property may be considered in determining actual or fair market value. It is not, however, conclusive of the actual or fair market value. *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2D 631, 637, (1998). Evidence of sale price alone is not sufficient to overcome the presumption that the county board of equalization has valued the property correctly. Where the evidence establishes that the sale was an arm's-length transaction between a seller who was not under compulsion to sell and a buyer who was not compelled to buy, the purchase price paid may receive strong consideration. *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982). The record here however does not establish that the Taxpayer acquired the subject property in an arm's-length transaction.

B.

EVIDENCE OF PRICES PAID FOR "COMPARABLE" PROPERTIES

The Taxpayer offered evidence of prices paid for "comparable" properties as support for the proposition that the price paid for the subject property represents actual or fair market value. "Comparable properties" share similar quality, architectural attractiveness (style), age, size, amenities,

functional utility, and physical condition. *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 98.

The subject property is a single-family residence originally built in 1930. The one-story home has 1,377 square feet of above-grade finished living area; an unfinished basement approximately 1,372 square feet in size; nine plumbing fixtures; and a two-car detached garage. The house sits on a lot approximately 51,841 square feet in size (Lot Width 104.35 feet x Lot Depth 496.8 feet = 51,481 sq. ft.), in neighborhood "8229." (E38:2). The Taxpayer offered a number of properties as "comparables" for the subject property. Some of the Taxpayer's comparables are summarized below.

	Subject	20860 Dutch Hall Road	2942 Linwood Road	771 Co. Rd G - Scribner	206 Queens - Ames	2659 Christens en Field	North Bend	3451 n Co Rd 20
Ex. #	38:2	3:1	4:1	5:1	6:1	7:1	8:1	9:2
Style or # Story	1	1½	Bungalow	1½	Mfd	Ranch	1½	1
Year Built	1930	1880	1915	1900	1970	1981	1900	1966
Year Last Remodel	?	?	?	?	?	?	?	?
Size	1,377	1,490	1,365	1,040	1,920	1,460	1,560	1,376
Quality	Avg	?	?	?	?	?	?	Fair+
Condition	Good	?	?	?	?	?	?	Avg
Central A/C	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Fixtures	9	?	?	?	?	?	?	6
Garage/ # Stalls	DET/2	None	DET/3	DET/2	None	ATT/2	DET/2	ATT/2
Date of Sale	¼002	3/2003	8/2002	6/2003	5/2002	6/2002	12/2002	10/95

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.

"The adjustment process is an analysis designed to show what the comparable property would have sold for if these differences were eliminated. The sale price of the comparable property is adjusted to account for as many of its differences from the subject property as possible . . . Applying the adjustments to the sale price of the comparable property provides a value indication for the subject property." *Id.* p. 76. The Taxpayer has failed to provide any evidence of any adjustments, to render the "comparables" truly comparable to the subject property.

Each Party utilizing "comparable" properties is required to provide copies of the Property Record File for that property. Title 442, Neb. Admin. Code, ch. 5, §020.06 (12/03); *Order for Hearing*, p. 2, ¶4(b). The Property Record File contains the inventory of physical characteristics for the property. See, e.g., *E13:2*. The inventory of physical characteristics is essential in order to determine the adjustments necessary to render the "comparable" property truly comparable to the subject property.

The Taxpayer failed to comply with the requirements of regulation and failed to comply with the requirements of the Commission's Order for Hearing concerning production of the Property Record File for the allegedly "comparable" properties. The record, in the absence of this evidence, fails to disclose the Quality of Construction, Condition, date of last remodel, and number of plumbing fixtures for the properties offered as "comparables" by the Taxpayer. The Commission cannot conclude that the Taxpayer's "comparables" shown above are truly comparable to the subject property without this evidence. The Taxpayer's other "comparables" suffer from the same defects.

When using "comparable" properties to establish value, the properties must be truly comparable." *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998). The residential properties offered as "comparables" by the Taxpayer are not truly comparable to the subject property, and therefore do not constitute clear and convincing evidence that the Board's determination of actual or fair market value of the subject property was unreasonable.

C.
THE ADVERSE INFERENCE RULE

The uncontroverted evidence establishes that the Taxpayer refused to allow a representative of the State Assessing

Officials's Office to inspect the interior of the subject property in March, 2003.

The Assessor has the statutory duty to value residential real property at market value. Neb. Rev. Stat. §77-1311 (2003 Supp.); Neb. Rev. Stat. §77-201 (Cum. Supp. 2002). An accurate description of the following characteristics is critical in order to determine actual or fair market value: quality of construction, style, age, size, amenities, functional utility, and condition. *Property Assessment Valuation, 2nd Ed.*, International Association of Assessing Officers, 1996, p. 98. The Assessor, in order to accurately describe these critical characteristics must inspect the subject property. Failure to do so carries its own penalties. *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 580, 144 N.W.2d 161, 169 (1966). Given this mandate, where the Taxpayer refuses the County's request to inspect the property, the provisions of the Adverse Inference Rule may be triggered. *See Yarpe v. Lawless Distrib. Co.*, 7 Neb.App. 957, 962 - 963, 587 N.W.2d 417, 421 (1998).

The provisions of this rule as applied to a valuation appeal may be summarized as follows: where a taxpayer refuses to allow the county assessor or his or her designate to inspect the subject property after challenging the assessed value as determined by the county, there is a presumption that the results

of the inspection would militate against the taxpayer's interest. The finder of fact is the sole judge of what probative force to give the fact that the taxpayer refused the county assessor's request to inspect the property. The relative convincing powers of the inferences to be drawn from that fact is for the determination of the finder of fact.

The Commission, from the entire record before it, finds and determines that the Taxpayer's refusal to allow an inspection would militate against the Taxpayer's interests: i.e., his request for a reduction in the actual or fair market value of the subject property would be unsuccessful if an inspection were allowed. The conclusion is supported by the fact that the Taxpayer also failed to adduce an opinion of actual or fair market value for the subject property.

E.
CONCLUSION

The Taxpayer has failed to demonstrate by clear and convincing evidence that the Board's decision was incorrect, and unreasonable or arbitrary. The Board's decision must accordingly be affirmed.

VI.
CONCLUSIONS OF LAW

1. The Commission only has jurisdiction over those issues raised before the county board of equalization. *Gordman Properties v. Hall Cty. Bd. of Equalization*, 225 Neb. 169, 403 N.W.2d 366 (1987); *Arcadian Fertilizer v. Sarpy Cty. Bd. of Equal.*, 7 Neb.App. 499, 505, 583 N.W.2D 353, 357 (1998).
2. The Commission has jurisdiction over the Parties and over the subject matter of this appeal: the valuation of the subject property for tax year 2003.
3. 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) (2003 Supp.).
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. The purchase price of property may be considered in determining actual or fair market value. It is not, however, conclusive of the actual or fair market value. *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2D 631, 637, (1998).
6. Evidence of sale price alone is not sufficient to overcome the presumption that the board of equalization has valued the property correctly. Where the evidence establishes that the sale was an arm's length transaction between a seller who was not under compulsion to sell and a buyer who was not compelled to buy, the purchase price paid may receive strong consideration. *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982).
7. When using "comparable" properties to establish value, the properties must be truly comparable. *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998).
8. After the plaintiff has introduced evidence tending to prove his or her case, if the defendant fails to testify to matters particularly within his knowledge necessary to his defense, a presumption exists that his testimony, if produced, would militate against his interest. The trier of

fact is the sole judge of what probative force to give the fact that a party has failed to call a witness or produce evidence. [T]he relative convincing powers of the inferences to be drawn from failing to call or examine a witness and other evidence are for the determination of the trier of fact. *Yarpe v. Lawless Distrib. Co.*, 7 Neb.App. 957, 962 - 963, 587 N.W.2d 417, 421 (1998)(Citations omitted).

9. The Taxpayer has failed to adduce clear and convincing evidence that the Board's decision was incorrect and unreasonable or arbitrary. The Board's decision must accordingly be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Dodge County Board of Equalization's Order setting the assessed value of the subject property for tax year 2003 is affirmed.
2. The Taxpayer's real property legally described as Lot 18, Ray Bradbury Subdivision, City of Fremont, Dodge County, Nebraska, more commonly known as 3165 West County Road "T" Boulevard, shall be valued as follows for tax year 2003:

Land	\$ 18,975
Improvements	\$ 88,570
Outbuildings	\$ 10,040
Total	\$117,585

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 Dodge County Treasurer, and the State Assessing Official for Dodge County, pursuant to Neb. Rev. Stat. §77-5016(7) (2003 Supp.).
5. This decision shall only be applicable to tax year 2003.
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 23rd day of February, 2004. The same were approved and confirmed by Commissioners Reynolds and Wickersham and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (2003 Supp.).

Signed and sealed this 24th day of February, 2004.

SEAL

Wm. R. Wickersham, Chair