

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

HELEN K. KNOSP,)	
)	
Appellant,)	CASE NO. 03R-45
)	03R-46
vs.)	03R-47
)	
DODGE COUNTY BOARD OF)	FINDINGS AND
EQUALIZATION,)	FINAL ORDER
)	
Appellee.)	

Appearances:

For the Appellant: Helen K. 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**

Helen K. Knosp and her husband Daniel R. Knosp ("the Taxpayer") own three single-family residential properties in the City of Fremont, Dodge County, Nebraska. The first property, the subject of Case Number 03R-45, is legally described as Lot 13, Block 44, Hawleys Addition, more commonly known as 1638 North "D" Street. The Taxpayer purchased this property on February 20, 2003 for \$46,500. (E12:1). The second property, the subject of Case Number 03R-46, is legally described as the West 15 feet of Lot 83, and all of Lots 84 and 85, and the W 115 feet of Lot 97,

City of Fremont. The Taxpayer purchased this property, more commonly known as 209 Boulevard Street, on October 1, 2002, for \$52,000. (E19:1). The third property, the subject of the Case Number 03R-47, is legally described as the East 70 feet of Lot 6, Block 63, and Tax Lot 245, Original Town of Fremont. The Taxpayer purchased this property, more commonly known as 426 East 10th Street, on November 14, 2002, for \$29,500.

The Taxpayer protested the State Assessing Official's determination of value for each of the subject properties for tax year 2003. The Assessing Official's determinations of value, the Taxpayer's requested values, and the Dodge County Board of Equalization's determinations of value are shown below.

Case No.	Assessing Official's Value	Taxpayer's Requested Value	Board's Determination of Value	Exhibit No.
03R-45	\$54,395	\$43,245	\$54,395	1:2; 1:1
03R-46	\$55,125	\$48,360	\$55,125	2:2; 2:1
03R-47	\$47,540	\$27,235	\$47,540	3:2; 3:1

The Taxpayer timely appealed the Board's decisions on August 15, 2003. (*Appeal Forms*). The Commission served Notices in Lieu of Summons on the Board on August 25, 2003, which the Board answered on August 27, 2003. The Commission thereafter consolidate the three appeals for purposes of hearing, and issued an Order for Hearing and Notice of Hearing. Copies of each Order were served 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 Board rested without adducing any testimonial evidence.

II. ISSUES

The issues before the Commission are (1) whether the Board's decisions denying the Taxpayer's protests were incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's values were reasonable.

III. APPLICABLE LAW

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the Board's decisions were incorrect and (2) that the Board's decisions were 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 values were 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 purchased the property in Case Number 03R-45 on February 20, 2003 for \$46,500. (E13:1). The house was described in the State Assessing Official's records as being of "Average" Condition and "Fair+" Quality of Construction for tax year 2003 in Exhibit 4. (E4:2). The house was listed of "Average" Condition but the Quality of Construction was raised to "Average" in Exhibit 13. (E13:2). The Taxpayer purchased this property at a public auction.
2. The Taxpayer purchased the property in Case Number 03R-46 on October 1, 2002, for \$52,000. (E19:1). The one-and-one-half story house was described in the State Assessing Official's records as being of "Average" Condition and "Average" Quality of Construction for tax year 2003. (E19:2). This property was listed for sale on the open market when the Taxpayer purchased the property.

3. The Taxpayer purchased the property in Case Number 03R-47 on November 14, 2002, for \$29,500. (E20:1). The one-and-one-half story house was described in the State Assessing Official's records as being of "Badly-Worn+" Condition and "Fair" Quality of Construction. (E12:2; E20:2). The Taxpayer purchased this property at a public auction.

V.
ANALYSIS

The Taxpayer alleges (1) the purchase price of each of the subject properties represented actual or fair market value of those properties as of the January 1, 2003, assessment date; and (2) the Taxpayer's "comparable" properties support the purchase prices as evidence of actual or fair market value. The Taxpayer implicitly alleges that this evidence establishes that the Board's decisions were incorrect; either unreasonable and arbitrary; and that the Board's determinations of value were 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 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 establishes that the Taxpayer acquired the subject properties in arm's-length transactions. The prices paid for the subject property may therefore receive strong consideration as evidence of actual or fair market value. Standing alone, however, the prices paid cannot overcome the statutory presumption.

In these appeals, however, there is no evidence in the record that either the State Assessing Official or anyone in her

office has inspected the subject properties. The statutory presumption in favor of the county board of equalization is extinguished where the county assessor or assessing official fails to make a personal inspection of the property. *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 580, 144 N.W.2d 161, 169 (1966).

The absence of any evidence of the State Assessing Official inspecting the subject properties extinguishes the statutory presumption. The only issue to be decided is whether the Board's determinations of value were unreasonable. The burden remains on the Taxpayer to demonstrate by clear and convincing evidence that the Board's values were unreasonable.

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 prices paid for the subject properties 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 in Case Number 03R-45 is a single family residence originally built in 1949. The State Assessing

Official's records indicate that the one-and-one-half story home (the Taxpayer testified that the home has a floored attic but is a one-story home) has 1,080 square feet of above-grade finished living area; an unfinished basement approximately 756 square feet in size; seven plumbing fixtures; and a one-car detached garage. The house sits on a lot approximately 6,635 square feet in size in neighborhood "4850." (E13:2).

The Taxpayer offered seven properties as "comparables" for the subject property in Case Number 03R-45. The Taxpayer's comparables are summarized below.

	Subject	225 W. 12 th	2113 N. Irving	142 W. 16 th	1303 N. Keene	524 E. 9 th	1726 N. Union	750 E. 1 st
Ex. #	13:2	5:2	5:3	5:4	5:5	5:6	5:7	5:8
Style	1½	1½	Ranch	Ranch	Bungalow	1½	Bungalow	1½
Year Built	1949	1900	1942	1927	1903	1887	1913	1907
Year Last Remodel	?	?	?	?	?	?	?	?
Size	1,080	940	672	798	1026	1725	984	1590
Quality	Avg	?	?	?	?	?	?	?
Condition	Avg	?	?	?	?	?	?	?
Central A/C	Yes	No	No	No	Yes	No	Yes	Yes
Fixtures	7	?	?	?	?	?	?	?
Garage/ # Stalls	Y/1	Y/1	Y/1	Y/1	Y/2	Y/2	Y/1	Y/1
Date of Sale	2/2003	6/2002	10/2003	9/2003	7/2003	12/2002	9/2003	10/2003

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. Five of the Taxpayer's "comparables" sold after the Board had started its protest hearings in July, 2003. The protest process begins six months after the assessment date. Neb. Rev. Stat. §77-1502 (Cum. Supp. 2002). The Board could not have considered the price paid for these "comparables" as evidence of actual or fair market value during the protest process.

The record also fails to establish that these "comparables" are truly comparable to the subject properties. 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). 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 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 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" are truly comparable to the subject property without this evidence. The Taxpayer has also failed to provide any evidence of any adjustments to render the "comparables" truly comparable to the subject property.

The residential properties offered as "comparables" by the Taxpayer do not constitute clear and convincing evidence that the Board's determination of actual or fair market value of the subject property in Case Number 03R-45 was unreasonable. The properties offered as "comparables" by the Taxpayer in Case Numbers 03R-46 and 03R-47 suffer from the same deficiencies.

C.

TAXPAYER'S OTHER EVIDENCE OF ACTUAL OR FAIR MARKET VALUE

The Taxpayer also adduced the testimony of her husband, a licensed real estate broker with seven years experience in the real estate market in Fremont. Mr. Knosp also buys and sells residential real property. Mr. Knosp testified based on his education, training and experience that the actual or fair market value of the subject properties was the amount paid for those properties in 2002.

D.

THE BOARD'S EVIDENCE

The Board, in denying the Taxpayer's protests, affirmed the State Assessing Official's determinations of value for each of the subject properties. (E1:1; E2:1; E3:1). The State Assessing Official's records include determinations of value using the Cost Approach. (E13:2; E19:2; E20:2). The record contains no evidence establishing the date of the Cost Factors; the reasons for the change in Condition in Case Number 03R-45; the "base" Cost Factors for the residential improvements; or the methodology used to determine depreciation. Additionally, the values derived from the Cost Approach are not the same values as determined by the Board.

Where the record fails to explain the methods used to establish value or the elements considered, there is no

presumption that the valuation is correct. That valuation is not supported by competent evidence and is legally erroneous. *Leech, Inc. v. Bd. Of Equal.*, 176 Neb. 841, 846, 127 N.W.2d 917, 921 (1964).

E.
TAXPAYER'S REQUEST FOR EQUALIZATION WITH
COUNTY-WIDE LEVEL OF ASSESSMENT

The Taxpayer's protest requested "equalization" with the county-wide level of assessment (93%). (E1:2). The Taxpayer renewed the request on her appeal form. The assessment to sales ratio is a measurement of the level of assessment within a class or subclass during a particular time-frame. Neb. Rev. Stat. §7-5023(Cum. Supp. 200). The statutes require that the county-wide level of assessment for residential real property such as the subject properties fall between 92% and 100% of actual or fair market value. Neb. Rev. Stat. §77-5023(Cum. Supp. 2003). The county-wide ratio of assessed value to sales price for 2003 fell within the acceptable range. *2003 Reports and Opinion of the Property Tax Administrator for Dodge County*, p. 63. There is no legal requirement that the Commission "equalize" the value of individual properties during the appeal process provided for in Neb. Rev. Stat. §77-1510 (Cum. Supp. 2002) using the county-wide level of assessment.

F.
CONCLUSION

The statutory presumption in favor of the Board is extinguished by the failure of the Assessing Official to inspect the subject property. The Board's determination of value is based on a methodology which was not explained on the record. The Commission must therefore conclude that the methodology is legally erroneous. *Leech, supra*. The Board's determinations of value are not reasonable. The Board's decisions must accordingly be vacated and reversed. The Taxpayer's request for equalization with the county-wide level of assessment, however, must be denied.

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) (2003 Supp.).
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 values 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. 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).
5. 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).
6. The statutory presumption in favor of the county board of equalization is extinguished where the assessor or assessing official fails to make a personal inspection of the subject

property. *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 580, 144 N.W.2d 161, 169 (1966).

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. Where the record fails to explain the methods used to establish value or the elements considered, there is no presumption that the valuation is correct. That valuation is not supported by competent evidence and is legally erroneous. *Leech, Inc. v. Bd. Of Equal.*, 176 Neb. 841, 846, 127 N.W.2d 917, 921 (1964).
9. The Taxpayer has adduced clear and convincing evidence extinguishing the statutory presumption in favor of the Board. There is no explanation of the methodology used to derive the Board's determinations of value. The Board's decisions must be accordingly be vacated and reversed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Dodge County Board of Equalization's Orders setting the assessed value of the subject properties for tax year 2003 are vacated and reversed.
2. The Taxpayer's real property in Case Number 03R-45, legally described as Lot 13, Block 44, Hawleys Addition, City of Fremont, Dodge County, Nebraska, more commonly known as 1638 North "D", shall be valued as follows for tax year 2003:

Land	\$ 7,245
Improvements	\$39,255
Total	\$46,500

3. The Taxpayer's real property in Case Number 03R-46, legally described as the West 15 feet of Lot 83, all of Lots 84 and 85, and the West 115 feet of Lot 97, City of Fremont, Dodge County, Nebraska, more commonly known as 209 Boulevard, shall be valued as follows for tax year 2003:

Land	\$ 7,885
Improvements	\$44,115
Total	\$52,000

4. The Taxpayer's real property in Case Number 03R-47, legally described as the East 70 feet of Lot 6, Block 63, and Tax Lot 245, Original Town of Fremont, in the City of Fremont,

Dodge County, Nebraska, more commonly known as 426 East 10th Street, shall be valued as follows for tax year 2003:

Land	\$12,740
Improvements	\$16,760
Total	\$29,500

5. Any request for relief by any Party not specifically granted by this order is denied.
6. 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.).
7. This decision shall only be applicable to tax year 2003.
8. 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.

Commissioner Wickersham dissented and would have held that (1) the purchase prices aren't evidence of actual or fair market value in these appeals (two of the purchases were foreclosure auctions; one of the purchases was from a corporate owner (Household Finance)) because it could not be concluded from the

record that a willing seller existed in any of the cases as required by Neb. Rev. Stat. §77-112 (2003 Supp.). Further the comparables offered by the Taxpayer were not comparable properties. Commissioner Wickersham would have further held that a taxpayer cannot prevail by simply criticizing the county's evidence. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

Commissioner Reynolds affirmed the Findings and Order entered by Commissioner Lore. The Findings and Final Order, having been approved and confirmed by a quorum of the Commissioners hearing the appeal are 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