

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

CLARKSON REGIONAL HEALTH)		
SERVICE, INC.,)		
)	CASE NO.	02C-89
Appellant,)		02C-91
)		02C-92
vs.)		
)		
DOUGLAS COUNTY BOARD OF)	FINDINGS AND ORDER	
EQUALIZATION,)		
)		
Appellee.)		

Filed January 20, 2004

Appearances:

For the Appellant: Andrew E. Grimm, Esq.
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For the Appellee: James R. Thibodeau, Esq.
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Before: Commissioners Hans, Lore, Wickersham and Reynolds.

**I.
STATEMENT OF THE CASE**

Clarkson Regional Health Services, Inc. ("the Taxpayer"), owns three tracts of land located in the City of Omaha, Douglas County, Nebraska. The Taxpayer's first tract of land, the subject of Case Number 02C-89, is legally described as ½ Vacated Alley and Lots 27 through 29, Block 6, Jerome Park, City of Omaha, Douglas County, Nebraska, is more commonly known as 4101 Dodge Street. (E1). The tract of land is approximately 18,417

square feet in size. (E7:1). The second tract, the subject of Case Number 02C-91, is legally described as Lots 40-41 & 42, Block 6, Jerome Park, City of Omaha, Douglas County, Nebraska, and is more commonly known as 4124 Farnam Street. (E2). The tract of land is approximately 17,424 square feet in size.

(E8:1). The third tract, the subject of Case Number 02C-92, is legally described as Lots 7 & 8, Block 15, Highland Place, City of Omaha, Douglas County, Nebraska, and is more commonly known as 304 South 41st Street. (E3). The tract of land is approximately 12,238 square feet in size. (E9:1).

The Douglas County Assessor ("the Assessor") determined that the actual or fair market value of the Taxpayer's real property as of the January 1, 2002, assessment date was \$221,000 in Case No. 02C-89; \$209,000 in Case No. 02C-91; and \$146,900 in Case No. 02C-92. (E1; E2; E3). The Taxpayer timely filed a protest of that determination. The Taxpayer alleged that the proposed values exceeded actual or fair market value. (E4:2; E5:2; E6:2). The Taxpayer further alleged that the prices paid for real property exceeded actual or fair market value in that "the [Taxpayer] has a long-standing policy of acquiring real estate near its campus . . . because of the lack of expansion room and the resulting need to acquire property when it becomes available. The [Taxpayer] is therefore forced to pay a premium for its acquisitions, because of the recognition of the various sellers

that the buyer [Taxpayer] requires the property for its ongoing health care business operations and is otherwise landlocked. (E4:2; E5:2; E6:2).

The Douglas County Board of Equalization ("the Board") denied the Taxpayer's protests. (E1; E2; E3). The Taxpayer timely filed an appeal of each of the Board's decisions. The Commission served a Notice in Lieu of Summons on the Board in each appeal, which the Board timely answered. The Commission consolidated these appeals for purposes of hearing on June 13, 2003, and issued an Order for Hearing and Notice of Hearing. 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 these appeals for hearing in the City of Lincoln, Lancaster County, Nebraska, on January 20, 2004. The Taxpayer adduced the testimony of one witness and rested. The Board thereafter moved to dismiss the appeal for failure to prove a prima facie case.

II. ISSUES

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

III.
APPLICABLE LAW

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the decision of the Board was incorrect and (2) that the decision of the Board was either 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 determination of 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's "comparables" vary in both size and location from the subject properties.
2. The date of sale of the Taxpayer's "comparables" range from January, 1997, through July, 2001.

3. The Taxpayer adduced no evidence of the adjustments necessary to adjust for the differences between its "comparable" properties and the subject property.

V.
ANALYSIS

Nebraska law provides that the value of real property may be determined one of three professionally accepted mass or fee appraisal methodologies. Neb. Rev. Stat. §77-112 (Cum. Supp. 2002). The three approaches to value are the Cost Approach; the Income Capitalization Approach; and the Sales Comparison Approach.

"The sales comparison approach uses the market to estimate value by comparing the subject to similar properties that have recently sold. When comparing the sold properties to the subject being appraised, the assessor must consider similarities and differences that affect value. Financing terms, market conditions, location and physical characteristics that must be considered when making adjustments to the sales prices of the comparable properties for their differences from the subject. . . . The basic steps in the sales comparison approach are (1) defining the appraisal problem, (2) collecting and analyzing the data, (3) selecting appropriate units of comparison, (4) making

reasonable adjustments based on the market, (5)

applying the data to the subject of appraisal.”

Property Assessment Valuation, 2nd Ed., International Association of Assessing Officers, 1996, p. 97.

Adjustments are a critical part of the Sale Comparison Approach. Professionally accepted mass appraisal methods hold that no two parcels of land are exactly alike.

“They might be identical in size and physical characteristics, but each parcel has a unique location and is likely to differ from other parcels in some way.”

Property Assessment Valuation, 2nd Ed., International Association of Assessing Officers, 1996, p. 76. Differences between the subject property and the comparable properties must be accounted for. When considering the land component of real property, “comparable” properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location. *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 70 - 76.

“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. In adjusting the sale price of the comparable, lump sum dollar amounts or percentages are customarily employed. Adjustments are always applied to the sale price of the comparable property, not to the subject property. If the sold property is inferior in some respect to the subject property, the sale price is increased by a dollar amount or percentage. If the sold property is superior in some respect, the sale price is decreased. Applying the adjustments to the sale price of the comparable property provides a value indication for the subject property." *Property*

Assessment Valuation, 2nd Ed., IAAO, 1996, p. 76.

Typical differences requiring adjustments are in time of sale, location, and physical characteristics. Adjustments may also need to be made for atypical financing. *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 76.

The Taxpayer's comparables, the subject property, and the Board's comparables are summarized below.

DATE	BUYER	SELLER	ADDRESS	SALE PRICE	SIZE	\$ PER SQ FT	\$/Assd Value
TAXPAYER'S COMPARABLES							
	Alegent	THC Inc	160 Center	\$617,000	123,274	\$5.01	
11/00	Alegent	THC Inc	18850 Lakeside	\$3,611,000	547,549	\$6.59	
07/01	Ne Meth Health	Gottch	Indian Creek Bus	\$254,000	46,714	\$5.44	
04/98	Hosking	Siegele	5818 Center	\$65,000	11,040	\$5.89	
01/97	Shaver Food	Nusrala	3006 Leavenworth	\$340,000	37,250	\$9.13	
3/97	Warehouse Inv	BCB	6805 Grover	\$225,000	56,050	\$4.01	
09/00	120 Grant LLC	Popp	11919 Grant	\$341,000	43,125	\$7.91	
7/99	Weist	LTS	11920 Miami	\$265,000	34,805	\$7.61	
SUBJECT							
			4101 Dodge		18417		\$12.00
11/99			4124 Farnam	\$1,000,000	17424	\$57.39	\$11.99
8/00			304 S 41 Street	\$225,000	12238	\$18.39	\$12.00
ASSESSOR'S COMPARABLES							
	Taco Bell		3855 Dodge	\$509,950	40796	\$12.50	\$3.37
6/99	Cutchall		3922 Dodge	\$475,000	23250	\$20.43	\$12.00
10/98	Cutchall		115 N 40 Street	\$68,000	7750	\$8.77	\$12.00
7/99	RM Properties		144 S 40 Street	\$150,000	11748	\$12.77	\$12.00

This chart demonstrates that the Taxpayer's "comparables" vary in size and location from the subject property. The date of sale for these "comparables" ranges from January of 1997, to July of 2001. The Taxpayer's witness testified that the "comparables" offered were eight miles away.

The Taxpayer's only witness is not employed by Clarkson Regional Health Services, Inc., and is not employed by Bishop Clarkson Memorial Hospital Foundation, Inc. This witness does not qualify as an owner of property for purposes of rendering an opinion of value for the subject property under *U. S. Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999) (owner allowed to provide an opinion of value) or *Kohl's Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb.App. 809, 813 - 814, 638 N.W.2d 877, 881 (2002) (Citations omitted) (corporate officer's opinion of value).

The Taxpayer's only witness was not qualified as an expert in the valuation of commercial real property. The Taxpayer offered no other evidence of value. The Taxpayer offered no evidence that the Board's decisions were incorrect and either 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 action of the Board was 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 valuation fixed by the board of equalization 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. An owner of property is competent to testify as to value. *U. S. Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).
5. A corporate officer who is familiar with property values is competent to testify as to value. *Kohl's Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb.App. 809, 813 - 814, 638 N.W.2d 877, 881 (2002).
6. There is no evidence that the Taxpayer's "comparables" are truly comparable to the subject property as required by *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837,

843 (1998) and *Westgate Recreation Ass'n v. Papio-Missouri River Natural Resources Dist.*, 250 Neb. 10, 17, 547 N.W.2d 484, 492 (1996) (Citations omitted).

7. There is no evidence that the Board's decisions were incorrect, unreasonable or arbitrary.
8. The Board's motion to dismiss must be granted under *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998).

VII.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The order of the Douglas County Board of Equalization setting the assessed values of the subject properties for tax year 2002 are affirmed.
2. In Case Number 02C-89, the Taxpayer's real property legally described as ½ Vacated Alley and Lots 27 through 29, Block 6, Jerome Park, City of Omaha, Douglas County, Nebraska, is more commonly known as 4101 Dodge Street, in shall be valued as follows for tax year 2002:

Land	\$221,000
Improvements	\$ -0-
Total	\$221,000

3. In Case Number 02C-91, the Taxpayer's real property legally described as Lots 40-41 & 42, Block 6, Jerome

Park, City of Omaha, Douglas County, Nebraska, and is more commonly known as 4124 Farnam Street shall be valued as follows for tax year 2002:

Land	\$209,000
Improvements	\$ -0-
Total	\$209,000

4. In Case Number 02C-92, the Taxpayer's real property legally described as Lots 7 & 8, Block 15, Highland Place, City of Omaha, Douglas County, Nebraska, and is more commonly known as 304 South 41st Street in shall be valued as follows for tax year 2002:

Land	\$146,900
Improvements	\$ -0-
Total	\$146,900

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 Douglas County Treasurer, and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (2003 Supp.).
7. These decisions shall only be applicable to tax year 2002.

8. 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 20th day of January, 2004. The same were 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) (2003 Supp.).

Signed and sealed this 20th day of January, 2004.

SEAL

Wm. R. Wickersham, Chair