

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

KIRBY W. SOUDER,)	
)	
Appellant,)	CASE NO. 03R-102
)	
vs.)	
)	
SALINE COUNTY BOARD OF)	FINDINGS AND ORDER
EQUALIZATION,)	
)	
Appellee.)	

Appearances:

For the Appellant: Kirby W. Souder
1523 County Road 2000
Wilber, NE 68465

For the Appellee: Tad Eickman
Saline County Attorney
P.O. Box 713
Wilber, NE 68465

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

**I.
STATEMENT OF THE CASE**

Kirby W. Souder owns an 8.85 acre tract of land legally described as Part of the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 18, Township 6, Range 4, Saline County, Nebraska. (E15:1). The tract of land is improved with a single family residence with 2,709 square feet of above-grade living area which was built in 1975. (E15:1).

The Saline County Assessor determined that the actual or fair market value of the Taxpayer's real property was \$258,710 as of the January 1, 2003, assessment date. (E15:7). The Taxpayer timely filed a protest of that determination, and alleged that the actual or fair market value of the property was \$184,000.

(E1). The Saline County Board of Equalization granted the protest in part and found that the actual or fair market value of the property was \$232,260 as of the assessment date. (E15:4).

The Taxpayer filed an appeal of the Board's decision on August 20, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 10, 2003, which the Board answered on December 30, 2003. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on October 28, 2003. 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 January 27, 2004. Kirby W. Souder appeared personally at the hearing. The Saline County Board of Equalization appeared through Tad Eickman, the Saline County Attorney.

II. ISSUES

The issues before the Commission are (1) whether the Board's decision was incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's value was 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 unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002)). 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 value as determined by the County 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 Board adduced evidence at the hearing before the Commission that the actual or fair market value of the subject property was \$210,620 as of the assessment. (E15:1).
2. The Taxpayer adduced evidence of "comparable" residential properties in Saline County. (E4:2; E6 - E10). The

Taxpayer failed to adduce any evidence of the adjustments necessary to render these "comparable" properties truly comparable to the subject property.

3. The only evidence of actual or fair market value in the record before the Commission is the Taxpayer's opinion of value.

V. ANALYSIS

The Board adduced documentary evidence that the actual or fair market value of the subject property is \$210,620. (E15:1). Neither the Assessor nor any Board member explained the methodology used to determine this value, and neither the Assessor nor any member of the Board adopted this "proposed value" as the Board's opinion of value for the subject property. The Board's evidence in Exhibit 15, page 1, extinguishes the statutory presumption. The only issue before the Commission is the actual or fair market value of the subject property as of the assessment date.

The Taxpayer's opinion of actual or fair market value is \$200,000. The Taxpayer adduced evidence of five "comparables." (E6 - E10). "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. When using "comparables" to determine value, similarities and differences between the subject property and the comparables must be recognized. *Id* at p.103. Most adjustments are for physical characteristics.

The Taxpayer's first "comparable" (E6) was built in 1999; is of "Good+ Quality of Construction;" and "Average Condition;" is a 1½ story home with 100% masonry construction; and 3,490 square feet of above grade finished living area. (E6:2). The Taxpayer's second "comparable" (E7) was built in 1977; is of "Average Quality of Construction" and "Average Condition;" is a one story home with 75% siding; and 1,800 square feet of above-grade finished living area. (E7:2). The Taxpayer's third "comparable" (E8) was built in 1976; is of "Average+ Quality of Construction" and "Average Condition;" is a 1½ story home with 100% masonry construction; and 2,816 square feet of above-grade finished living area. (E8:2). The Taxpayer's fourth "comparable" (E9) was built in 1998; is of "Very Good Quality of Construction" and "Average Condition;" is a 13% two-story and 87% one story home with 100% masonry veneer construction; and 2,480 square feet of above-grade finished living area. (E9:2). The Taxpayer's fifth "comparable" (E10) was built in 1993; is of "Good Quality of Construction" and "Average Condition;" is a two-story home with 100% masonry veneer construction; and 2,428 square feet of above-grade finished living area. (E10:2). There

are also differences in amenities between the subject property and each of the Taxpayer's comparables.

The Taxpayer adduced no evidence of the adjustments necessary to render each of these "comparables" truly comparable to the subject property. "Comparing assessed values of other properties with the subject property to determine actual value has the same inherent weakness as comparing sales of other properties with the subject property. 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). None of the Taxpayer's comparables are truly comparable to the subject property.

The only evidence of actual or fair market value in the record before the Commission is the Taxpayer's opinion of value. An owner who is familiar with his property and knows its worth is permitted to testify as to its value. *U. S. Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999). While the Taxpayer has not bought or sold other residential property in Saline County, and offered no basis for his opinion of value, his opinion is the only evidence of value in the record.

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) (Cum. Supp. 2002).
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 who is familiar with his property and knows its worth is permitted to testify as to its value. *U. S. Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).

5. The Commission must base its decision on the record before it. Neb. Rev. Stat. §77-5016(3) (Cum. Supp. 2002). The only evidence of actual or fair market value in the record before the Commission is the owner's opinion of value. The Commission must therefore vacate and reverse the Board's decision.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The order of the Saline County Board of Equalization setting the assessed value of the subject properties for tax year 2003 is vacated and reversed.
2. The Taxpayer's real property legally described as Part of the E^{1/2}NE^{1/4} of Section 18, Township 6, Range 4, Saline County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$ 20,315
Improvements	\$179,685
Total	\$200,000
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 Saline County Treasurer, and the Saline County Assessor, 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 27th day of January, 2004. The same were approved and confirmed by Commissioners Hans 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 27th day of January, 2004.

SEAL

Wm. R. Wickersham, Chair