

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

ERICH RUMPEL AND ELSA RUMPEL,)	
)	
Appellant,)	CASE NO. 03R-151
)	
vs.)	
)	
BOYD COUNTY BOARD OF)	FINDINGS AND
EQUALIZATION,)	FINAL ORDER
)	
Appellee.)	

Appearances:

For the Appellant: Erich Rumpel
P.O. Box 416
Spencer, NE 68777

For the Appellee: Carl Schuman, Esq.
Boyd County Attorney
P.O. Box 186
Butte, NE 68722

Before: Commissioners Lore, Reynolds, and Wickersham.

**I.
STATEMENT OF THE CASE**

Erich Rumpel and Elsa Rumpel ("the Taxpayers") own a tract of land legally described as Lots 1 through 5 and Lots 11 through 20, Block 10, Original Town of Spencer, Boyd County, Nebraska. (E3:1). The tract of land is improved with a single-family residence with 1,840 square feet of above-grade finished living area. The house has a finished walkout basement. The size of the basement is listed as 1,840 square feet in size. (E3:3). The house has a "stringer," to which a deck was intended to be attached. The deck was never added, and two doors from the main floor which are intended to access the deck cannot be used.

(E3:6). The house has an attached two-car garage and a detached one-car garage with a workshop area.

The Boyd County Assessor ("the Assessor") determined that the actual or fair market value of the Taxpayers' real property was \$116,720 as of the January 1, 2003, assessment date. (E3:8). The Taxpayers timely filed a protest of that determination and alleged that the actual or fair market value of the property was \$90,000. (E6:1). The Boyd County Board of Equalization ("the Board") granted the protest in part. The Board reduced the Quality of Construction and Condition from "Average" to "Fair." Based on these adjustments the Board found that the actual or fair market value of the property was \$112,525 as of the assessment date. (E3:2).

The Taxpayers filed an appeal of the Board's decision on August 22, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 15, 2003, which the Board answered on September 23, 2003. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on March 26, 2004. 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 Norfolk, Madison County, Nebraska, on June 16, 2004. The Taxpayers appeared personally at the

hearing. The Board appeared through Carl Schuman, the Boyd County Attorney. Commissioners Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer. Commissioner Hans was excused from the proceedings.

The Taxpayers' attorney moved to withdraw by written motion filed on June 14, 2004. The Motion was made at the Taxpayers' request. The Commission considered and thereafter granted the Motion on the record. The Commission then afforded each of the Parties the opportunity to present evidence and argument. The Board moved to dismiss the appeal at the close of the Taxpayers' case for failure to meet the requirements of the burden of persuasion.

**II.
ISSUES**

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayers' 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 Taxpayers are 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 Taxpayers, 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 Taxpayers adduced no evidence of actual or fair market value of the subject property as of January 1, 2003, other than their opinion evidence.
2. The Taxpayers adduced no evidence of actual or fair market value of any comparable properties.
3. The Taxpayers refused to allow an interior inspection of the subject property.

V.
ANALYSIS

The Taxpayers allege that (1) the subject property's assessed value exceeds actual or fair market value; and (2) that the subject property's assessed value is not equalized with comparable properties in the Town of Spencer.

The Taxpayers testified that the actual or fair market value of the subject property was between \$75,000 and \$85,000 as of the assessment date. The Taxpayers' failed to provide any evidence of prices paid for comparable properties to support that opinion. The Taxpayers' testimony concerning the recent sale of an adjoining property was not clear and convincing evidence of the value of the subject property as of the assessment date. First, there is no evidence that this property is truly comparable to the subject property. Second, the sale occurred more than a year after the assessment date at issue.

The Taxpayers' refused to allow an interior inspection of the subject property for tax year 2003. The Assessor has the statutory duty to value residential real property at market value. Neb. Rev. Stat. §77-201 (1998 Cum. Supp.) 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 Taxpayers refused the Board's request to inspect the property, the provisions of the Adverse Inference Rule are 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 may be summarized as follows: where the Taxpayer refuses to allow the Board to inspect the subject property, after challenging the assessed value as determined by the Board, there is a presumption that the results of the inspection would be contrary to the Taxpayers' interests. The finder of fact is the sole judge of what probative force to give the fact that the Taxpayers refused the Board'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.

If an inspection of the interior were allowed the Assessor might or might not have been able to verify the unsubstantiated statements concerning the Quality of Construction, Condition of the property, and the size of the basement.

The Taxpayers testified that the subject property's assessed values were not equalized with comparable properties. The

Taxpayers failed to provide any evidence of actual or fair market value of comparable properties, and failed to provide any evidence of assessed values of comparable properties.

The Taxpayers expressed concern about the amount of actual property taxes paid for the subject property. The Commission, as a matter of state law, has no jurisdiction over property taxes levied in this appeal.

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 Taxpayers present 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 Taxpayers. *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).

4. The Taxpayers' burden of persuasion is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon their property is grossly excessive when compared to valuations placed on other similar property and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment. *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).
5. "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).
6. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform

percentage of its actual value. The purpose of equalization of assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that no one part is compelled to pay a disproportionate share of the tax. If a Taxpayers' property is assessed in excess of the value at which others are taxed, then the Taxpayer has a right to relief. However, the burden is on the Taxpayers to show by clear and convincing evidence that the valuation placed upon the Taxpayers' property when compared with valuation placed on other similar property is grossly excessive." *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).

7. The Taxpayers have failed to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary.
8. The Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayers establish 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).
9. The Board's motion 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 Boyd County Board of Equalization's Order setting the assessed value of the subject property for tax year 2003 is therefore final.

3. The Taxpayers' real property legally described as Lots 1 - 5, and Lots 11 - 20, Block 10, Original Town of Spencer, Boyd County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$ 2,625
Improvements	\$109,900
Total	\$112,525

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 Boyd County Treasurer, and the Boyd 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.

7. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

I certify that I made and entered the above and foregoing Findings and Orders in this appeal on the 16th day of June, 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) (Reissue 2003).

Signed and sealed this 17th day of June, 2004.

SEAL

Wm. R. Wickersham, Chair