

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

TAMMIE J. FISCHER and WILLIAM )		
WALSTAD, )		
Appellants, )		CASE NO. 03R-205
vs. )		
LANCASTER COUNTY BOARD OF )		FINDINGS AND
EQUALIZATION, )		FINAL ORDER
Appellee. )		

Appearances:

For the Appellant: William Walstad  
7450 San Mateo Lane  
Lincoln, NE 68516

For the Appellee: Michael E. Thew, Esq.  
Chief Deputy, Civil Division  
Lancaster County Attorneys Office  
575 South 10<sup>th</sup> Street  
Lincoln, NE 68508

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

**I.  
STATEMENT OF THE CASE**

Tammie J. Fischer and William Walstad own a 9,790 square foot tract of land which backs onto the Yankee Hill Golf Course. The tract of land is legally described as Lot 2, Block 4, Cripple Creek South 10<sup>th</sup> Addition, Lancaster County, Nebraska. (E3:6). The tract of land is improved with a two-story, single-family residence with 3,961 square feet of above-grade finished living area built in 1998. (E10:66). The residence has a three-car garage and a walkout basement 1,873 square feet in size, of which 1,500 square feet is finished. (E10:52; E10:66). The finished

basement has a complete kitchen, a bedroom, a bathroom, a family room, and two offices. (E3:6). The house also has 4 above-grade bedrooms, and 4 above-grade bathrooms. The Assessor determined that the "Quality of Construction" was "Good" (E10:66), also described as "400" (E10:47). The Assessor also determined that the "Condition" of the improvements was "Average" (E10:66) also described as "3". (E10:47). One of the owners testified that he has invested approximately \$360,000 in buying the land and building the improvements since 1998.

The Lancaster County Assessor ("the Assessor") determined that the actual or fair market value of the Taxpayer's real property was \$471,400 as of the January 1, 2003, assessment date. (E1). The Taxpayer timely filed a protest of that determination and alleged that the equalized value of the property was \$415,705. (E10:39 - 43). The Lancaster County Board of Equalization ("the Board") denied the protest. (E1).

Tammie J. Fischer filed an appeal of the Board's decision on August 25, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 17, 2003, which the Board answered on October 17, 2003. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on March 29, 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 Lincoln, Lancaster County, Nebraska, on June 24, 2004. Tammie J. Fischer and William Walstad ("the Taxpayer") appeared personally at the hearing. The Board appeared through Michael E. Thew, Esq., Chief Deputy, Civil Division, Lancaster County Attorneys Office. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Wickersham served as the presiding officer.

The Commission afforded each of the Parties the opportunity to present evidence and argument. The Board moved to dismiss the Taxpayer's appeal at the close of the Taxpayer's case-in-chief for failure to meet the burden of proof imposed by law.

## **II. ISSUES**

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayer's equalization 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 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)(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 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. FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer's opinion of value is \$409,686, which the Taxpayer testified might be adjusted for land value due to location on a golf course. (E3:2).
2. The Taxpayer's opinion of value is based on assessed values of "comparable" properties. (E3:2).
3. The Taxpayer adduced no evidence of the adjustments necessary to account for all of the differences between the "comparable" properties and the subject property.
4. The Taxpayer offered no evidence of the actual or fair market value of the properties offered as "comparables."

**V.**  
**ANALYSIS**

The Taxpayer alleged that the Board was inconsistent in its valuation of the subject property. The only issue before the Commission is the value placed on the property by the Board. The Board of Equalization is not bound by recommendations of the referee or referee coordinator. (E14:6; E14:9). Recommendations made to the Board by a referee or the referee coordinator, or differences of opinion between the referee, the referee coordinator and the Board are not at issue before the Commission.

The Taxpayer alleged that the subject property's 2003 assessed value is not equalized with comparable properties. Equalization is defined as the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of actual value. Assessments must be equalized so that no taxpayer is compelled to pay a disproportionate share of the tax. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999). If a taxpayer's property is assessed in excess of the value at which others are taxed, that taxpayer has a right to relief. The taxpayer, however, bears the burden of establishing by clear and convincing evidence that his assessed value, 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).

The Taxpayer offered eight single-family residences as "comparables" for the subject property. (E3:2). When comparing assessed values of other properties with the subject property to determine actual 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). "Comparable properties" share similar quality, architectural attractiveness, style, age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation*, 2<sup>nd</sup> 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. *Property Assessment Valuation*, 2<sup>nd</sup> Ed., 1996, p.103. Financing terms, market conditions, location, and physical characteristics are items that must be considered when making adjustments. *Property Assessment Valuation*, 2<sup>nd</sup> Ed., 1996, p. 98. Most adjustments are for physical characteristics. *Property Assessment Valuation*, 2<sup>nd</sup> Ed., 1996, p.105.

All of the Taxpayer's comparables are located in the Cripple Creek South Subdivision. (E3:2; E31). All of the Taxpayer's comparables were built between 1998 and 2000. (E:2). None of the Taxpayers "comparables" back onto the Yankee Hill Golf Course. Only two of the Taxpayer's comparables, listed as 6 and 8, have walkout basements. (E3:2). Comparable number 6 has a

basement, but it is unfinished. (E3:36). Taxpayer's "comparable" number 8 has 3,629 square feet of above-grade finished living area, which is 332 square feet smaller than the above-grade finished living area for the subject property. (E3:2). Comparable number 8 has a smaller basement than the subject property (1,632 square feet compared to 1,873 square feet)(E3:46; E3:8), and a smaller amount of finished basement (1,350 square feet compared to 1,500 square feet)(E3:46; E3:8). Comparable Number 8 has two bedrooms, one bathroom and a family room in the basement. (E3:44). The subject property has one bedroom, one bathroom, a family room, two offices and a complete kitchen in the basement. (E3:6).

The Taxpayer also offered no evidence regarding the actual or fair market value of the comparable properties. Assuming without deciding that the comparable properties are assessed at 100% of actual or fair market value, such evidence would not establish that the subject property's assessed value exceeds 100% of actual or fair market value, or that the subject property's assessed value is not equalized with truly comparable properties.

The assessed value of Taxpayer's comparable number 8 is \$388,400. (E3:47). Adding \$36,000 for the difference in lot value yields an assessed value of \$424,400. The difference between this value and the subject property's assessed value of \$471,400 leaves a difference of \$47,000. This difference may

account for the subject property's additional 332-square feet of above-grade finished living area, additional 241-square feet of basement, additional 150-square feet of finished basement living area, and the basement's full kitchen.

The Taxpayer has failed to adduce any evidence regarding an element of an equalization appeal. The Taxpayer has therefore failed to meet the burden of proof imposed by law. Based upon the applicable law, the Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes 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).

**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 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).

4. "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).
5. Equalization is defined as the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. Assessments must be equalized so that no taxpayer is compelled to pay a disproportionate share of the tax. *Cabela's Inc. v.*

*Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).

6. If a taxpayer's property is assessed in excess of the value at which others are taxed, that taxpayer has a right to relief. The taxpayer, however, bears the burden of establishing by clear and convincing evidence that his assessed value 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. When comparing assessed values of other properties with the subject property to determine actual 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. The Taxpayer has failed to adduce evidence that the Board's decision was incorrect and either unreasonable or arbitrary.
9. The Taxpayer has failed to adduce evidence that the Board's determination of value was unreasonable.
10. Based upon the applicable law, the Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes 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).

11. The Board's Motion to Dismiss 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 Lancaster County Board of Equalization's Order setting the assessed value of the subject property for tax year 2003 is therefore final.
3. The Taxpayer's real property legally described as Lot 2, Block 4, Cripple Creek South 10<sup>th</sup> Addition, Lancaster County, Nebraska, more commonly known as 7450 San Mateo Lane, shall be valued as follows for tax year 2003:

Land	\$ 81,000
Improvements	\$390,400
Total	\$471,400
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 Lancaster County Treasurer, and the Lancaster 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 Commissioner Hans made and entered the above and foregoing Findings and Orders in this appeal on the 24<sup>th</sup> day of June, 2004. The same were approved and confirmed by Commissioners Lore, Reynolds and Wickersham 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 24<sup>th</sup> day of June, 2004.

**SEAL**

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*Wm. R. Wickersham, Chair*