

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

MICHEAL L. MOROSIN and VANITA	)	
J. MOROSIN,	)	
	)	CASE NO. 034-207
Appellants,	)	
	)	
vs.	)	FINDINGS AND
	)	FINAL ORDER
LANCASTER COUNTY BOARD OF	)	
EQUALIZATION,	)	
	)	
Appellee.	)	

Appearances:

For the Appellant: Micheal L. Morosin  
2055 "S" Street  
Lincoln, NE 68503

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**

Micheal L. Morosin and Vanita J. Morosin own a tract of land approximately 5,100 square feet in size legally described as Lot 6 & E½ Lot 7, Block 7, Lincoln Driving Park Company's First Subdivision, City of Lincoln, Lancaster County, Nebraska. (E1). The tract of land is improved with an owner-occupied, three-bedroom, two-bathroom single-family residence originally built in 1900. The property is surrounded on three sides by a park and has all new services (new gas line, new water line, new

electrical service and new sewer service). The Morosins acquired the property in 1982 for \$22,530.

The Lancaster County Assessor ("the Assessor") determined that the actual or fair market value of the Morosins' real property was \$52,700 as of the January 1, 2003, assessment date. (E1). The Morosins' timely filed a protest of that determination and requested that the assessed value of the subject property be increased. (E1). The Lancaster County Board of Equalization ("the Board") denied the protest. (E1).

Michael L. Morosin ("the Taxpayer") appealed 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 22, 2004. The Taxpayer appeared personally at the hearing. The Board appeared through Michael E. Thew, Chief Deputy, Civil Division, Lancaster County Attorney. 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 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 valuation 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. Neither Party offered any documentary or photographic evidence of value.
2. The Taxpayer hasn't bought or sold any other real property in Lancaster County in the past five years. The Taxpayer's occupation does not involve the sale or purchase of any type of real property in Lancaster County.
3. The Taxpayer testified that in his opinion the actual or fair market value of the subject property was \$63,000 as of the assessment date.
4. The Taxpayer called the Board's Appraiser as a witness. The Board's Appraiser testified that in his opinion the actual or fair market value of the subject property was \$52,700 as of the assessment date.

**V.  
ANALYSIS**

The Taxpayer's only evidence of value was opinion evidence. 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). The burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive 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).

There is no evidence of actual or fair market value of similar properties. There is no evidence of assessed values of similar properties. The Taxpayer has failed to satisfy his burden of proof. The Board's motion to dismiss must accordingly be granted.

## 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. The burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the

valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive 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).

6. 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).
7. The Taxpayer failed to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary.
8. The Board's motion to dismiss must 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 6 & E½ Lot 7, Block 7, Lincoln Driving Park Company's First

Subdivision, City of Lincoln, Lancaster County, Nebraska,  
shall be valued at \$52,700 for tax year 2003.

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 21<sup>st</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 23<sup>rd</sup> day of June, 2004.

**SEAL**

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*Wm. R. Wickersham, Chair*