

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

MARJORIE L. NOLAN,)	
)	
Appellant,)	CASE NO. 03R-68
)	
vs.)	
)	
BOYD COUNTY BOARD OF)	FINDINGS AND
EQUALIZATION,)	FINAL ORDER
)	
Appellee.)	

Appearances:

For the Appellant: Marjorie L. Nolan
P.O. Box 217
Butte, NE 68722

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**

Marjorie L. Nolan ("the Taxpayer") own a tract of land legally described as Lot 3 and the N½ of Lot 4, Block 22, Original Town of Butte, Boyd County, Nebraska. (E6:4). The tract of land is improved with a single-family residence with 1,444 square feet of above-grade finished living area. The house has a finished walkout basement approximately 1,008 square feet in size. (E6:4). The Assessor determined that the house is of Average Quality of Construction and Average Condition. (E6:4).

The Boyd County Assessor ("the Assessor") determined that the actual or fair market value of the Taxpayers' real property

was \$46,570 as of the January 1, 2003, assessment date. (E6:3). The Taxpayer timely filed a protest of that determination and alleged that the actual or fair market value of the property was \$31,923. (E9). The Boyd County Board of Equalization ("the Board") denied the protest. (E1).

The Taxpayer appealed the Board's decision on August 18, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 5, 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 Taxpayer 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 Commission then afforded each of the Parties the opportunity to present evidence and argument.

II.
ISSUES

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayer's 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 testified that the actual or fair market value of the subject property was \$32,000 as of the assessment date but offered no other evidence to support her opinion of value.
2. The Taxpayer adduced evidence concerning four "comparables" properties. The Taxpayer was unable to quantify the impact on actual or fair market value of the differences between the subject property and the comparable property.
3. The Taxpayer adduced no evidence concerning her equalization argument.

**V.
ANALYSIS**

The Taxpayer alleges 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 Butte. (Protest Form).

The Taxpayer testified that the original improvements on the property were built in 1940, the "upstairs" was added in 1951, some work on the basement and basement sump pit and pump was undertaken in 1993 when the Taxpayer purchased the property, and an attached garage was added in 1996. The Taxpayer testified

that the actual or fair market value of the subject property was \$32,000 as of the assessment date. The Taxpayer adduced evidence concerning four single-family residential properties as "comparable" properties. (E2 - 5). "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. *Property Assessment Valuation*, 2nd Ed., 1996, p.103. "Financing terms, market conditions, location, and physical characteristics are items that must be considered when making adjustments . . . " *Property Assessment Valuation*, 2nd Ed., 1996, p. 98. Most adjustments are for physical characteristics. *Property Assessment Valuation*, 2nd Ed., 1996, p.105.

The subject property improvements, a one-story home, is of "Average" Quality of Construction; "Average" Condition; had an effective age 28 years as of the assessment date; has 1,444 square feet of above-grade finished living area; a finished basement approximately 1,008 square feet in size; 9 plumbing fixtures; and an assessed value for the home and 1½ lots is \$46,570. (E6:4).

The property which is described in Exhibit 2 is a 1½-story home of "Average" Quality of Construction; "Average" Condition; an effective age of 63 years as of the assessment date; 2,380 square feet of above-grade living area; an unfinished basement approximately 961 square feet in size; nine plumbing fixtures; and an assessed value with land and improvements of \$33,920. (E2:2; E2:1).

The property which is described in Exhibit 3 is a 2-story bi-level home of "Average" Quality of Construction; "Average" Condition; an effective age of 33 years as of the assessment date; had 2,104 square feet of above-grade living area; no basement; five plumbing fixtures; and an assessed value with one lot of \$29,265. (E3:2; E3:1).

The property which is described in Exhibit 4 is a 1-story home of "Average" Quality of Construction; "Average" Condition; an effective age of 28 years as of the assessment date; 1,572 square feet of above-grade living area; an unfinished basement approximately 1,140 square feet in size; nine plumbing fixtures and an assessed value for three lots and improvements of \$43,380. (E4:2; E4:1).

The property which is described in Exhibit 5 is a 1-story home of "Average" Quality of Construction; "Average" Condition; an effective age of 32 years as of the assessment date; 1,040 feet of above-grade living area; an unfinished basement

approximately 1,040 square feet in size; seven plumbing fixtures; and an assessed value for with 1½ lots and improvements of \$27,635. (E5:2; E5:1).

The Taxpayer was unable to quantify the adjustments necessary to account for the differences between the subject property and the "comparables." The Commission from the record before it cannot conclude that the offered properties are truly comparable to the subject property.

The Taxpayer was also unable to quantify the impact on actual or fair market value of any of the other issues she raised.

The Assessor described a mathematical process to arrive at the effective age for improvements and the Assessor further testified that the methodology was consistently applied to the subject property and all other residential property in Boyd County. The Taxpayer's assertions that the effective age was improperly determined is not supported by clear and convincing evidence.

The Taxpayer has not adduced clear and convincing evidence that the Board's decision was incorrect and unreasonable or arbitrary. The Board's decision must accordingly be affirmed.

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. The Taxpayer's 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. "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).
7. 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 Taxpayer's 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 Taxpayer to show by clear and convincing evidence that the valuation placed upon the Taxpayer's 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).

8. The Taxpayer has failed to meet her burden of persuasion. The Board's decision must accordingly be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Boyd County Board of Equalization's Order setting the assessed value of the subject property for tax year 2003 is affirmed.
2. The Taxpayer's real property, legally described as Lot 3 and the N½ of Lot 4, Block 22, Original Town of Butte, Boyd County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$ 1,645
Improvements	\$44,925
Total	\$46,570

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 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).
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 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