

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

DAVID A. OENBRING,)	
)	
Appellant,)	CASE NO. 03R-149
)	
vs.)	
)	FINDINGS AND
LANCASTER COUNTY BOARD OF)	FINAL ORDER
EQUALIZATION,)	
)	
Appellee.)	

Appearances:

For the Appellant: David A. Oenbring
2630 South 13th Street
Lincoln, NE 68502

For the Appellee: Michael E. Thew, Esq.
Chief Deputy, Civil Division County
Lancaster County Attorney's Office
575 South 10th Street
Lincoln, NE 68508

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

**I.
STATEMENT OF THE CASE**

Michael A. Oenbring ("the Taxpayer") owns an 6,500 square foot improved tract of land legally described as Lot 16, Block 8, Van Dorn Park Addition, City of Lincoln, Lancaster County, Nebraska. (E4:7). The tract of land is improved with a single-family residence with 1,197 square feet of above-grade living area built in 1950. (E9; E4:8).

The Lancaster County Assessor ("the Assessor") determined that the actual or fair market value of the Taxpayer's real property was \$106,300 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 \$90,357. (E4:3). The Lancaster County Board of Equalization ("the Board") denied the protest. (E1). The Taxpayer 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 October 10, 2003. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on January 9, 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 March 11, 2004. The Taxpayer appeared personally at the hearing. The Board appeared through Michael E. Thew, Chief Deputy, Civil Division, Lancaster County Attorney's Office. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer.

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 Board's decision was incorrect and (2) that the Board's decision was unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7)(Reissue 2003)). 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 actual or fair market value of the subject property is impacted by (1) high traffic volume; (2) proximity to a hospital; and (3) lack of on-street parking. The Taxpayer failed to adduce evidence quantifying the impact on actual or fair market value of any of these factors.

2. The Taxpayer failed to adduce any evidence that his property alone is assessed at a higher percentage of actual or fair market value than comparable properties.

V.
ANALYSIS

The Taxpayer alleges that the assessed value of his property is not equalized with the assessed value of comparable single-family residential real property. 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. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999). The burden on the taxpayer in an equalization proceeding is 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).

The Taxpayer, in support of his equalization claim, alleges first that the Board's "comparables" are not comparable to the subject property or, in the alternative, that if those

"comparables" are truly comparable, then those comparables establish that the subject property is overvalued.

"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 "comparable" properties to establish valuation the "comparable" 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). If there are differences between the subject property and the "comparable" properties, then the differences must be accounted for through the adjustment process.

"The adjustment process is an analysis designed to show what the comparable property would have sold for if these differences were eliminated. The sale price of the comparable property is adjusted to account for as many of its differences from the subject property as possible. In adjusting the sale price of the comparable, lump sum dollar amounts or percentages are customarily employed. Adjustments are always applied to the sale price of the comparable property, not to the subject property. If the sold property is inferior in some respect to the subject property, the sale price is increased by a dollar amount or percentage. If the

sold property is superior in some respect, the sale price is decreased. Applying the adjustments to the sale price of the comparable property provides a value indication for the subject property."

Property Assessment Valuation, 2nd Ed., IAAO, 1996, p. 76.

"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.

The Taxpayer alleges that the Assessor's "comparable" properties differ from the subject in that the actual or fair market value of the subject property is impacted by (1) high traffic volume; (2) proximity to a hospital; (3) lack of on-street parking; and (4) "threats" of street widening. Changes in assessed value as a result of these factors would produce a resulting change in the level of assessment. There is no evidence that the Assessor adjusted his "comparable" properties to account for these factors. The Taxpayer also failed to adduce any evidence quantifying the impact of these factors on actual or fair market value.

The Taxpayer further alleges that if the Assessor's comparable properties are truly comparable to the subject property, then the assessed values of the Assessor's comparable properties establish that the subject property is overvalued.

(E2:4). The assessment to sales price ratio for each of the Assessor's comparable properties is set forth below:

	Sale Date	2003 Assessed Value	Sale Price	Ratio	Exhibit #
Subject	N/A	\$106,300	N/A	112%*	2:4
1436 Burr	02/02	\$114,600	\$ 98,000	116.94%	2:4; 11:4
2933 S. 40 th	03/02	\$ 87,000	\$ 94,000	92.55%	2:4; 12:4
2809 S. 14 th	05/01	\$ 94,800	\$ 92,500	102.49%	2:4; 13:4
4211 "M"	02/01	\$118,700	\$120,000	98.92%	2:4; 14:5
3820 Worthington	09/01	\$100,800	\$108,600	92.82%	2:4; 15:4

* Based on the Taxpayer's opinion of value.

Location has a significant impact on value. The only Assessor "comparables" which are located in the same neighborhood as the subject property (7332 Garfield Park) (E2:5), are the Assessor's first and third comparable properties. (E2:7; E2:11). There is no evidence of any adjustment necessary to account for any changes in the real estate market in the 7332 Garfield Park neighborhood of the City of Lincoln, Lancaster County, between February, 2001 and the January 1, 2003, assessment date. Assuming without deciding that no "time adjustment" is necessary, the ratio of assessed value to sales price appears to indicate that residential real property in the 7332 Garfield Park neighborhood is overvalued. These two sales, one with a ratio of 116.94% and the other with a ratio of 102.49%, standing alone do not establish that the assessed value of the subject property is

not equalized with comparable property, even though that value may exceed market value.

The Taxpayer offered seven other single-family residential properties as "comparables" in support of his contention that the subject property is overvalued. (E2:29). The Commission's Order for Hearing compels a party utilizing comparable properties as evidence to provide complete and legible copies of the County's Property Record File for the tax year at issue for those comparable properties. (*Order for Hearing, ¶2, p. 3*). The Taxpayer failed to provide the required documentation for the seven properties offered as "comparables." The Taxpayer did adduce copies of information posted on the Assessor's website for four of his seven "comparables." (E2:20; E2:22; E2:24; E2:26). The first of these Taxpayer's comparables (E2:20) is not located in the 7332 Garfield Park neighborhood. The remaining three Taxpayer "comparables" are one two-story and two one-and-one-half story single-family residences. The subject property is a one-story home. The Taxpayer's comparables were built in 1924, 1926 and 1939. The subject property was built in 1950. One of the Taxpayer's comparables has one bathroom while the other two have two bathrooms, although one of these has a two-fixture bath. The subject property has three full bathrooms. Each of these three Taxpayer's comparables has three bedrooms, while the subject property has two-bedrooms. None of the these three comparables

has sold within the past five years. The assessed values of these three properties range from \$113,100 to \$124,600. All of these assessed values are higher than the assessed value of the subject property.

The Taxpayer alleges that when comparing the assessed value to the size of the above-grade finished living area, each of these three comparables have a lower per square foot assessed value. This is true. However, the Taxpayer has failed to adduce any evidence of the adjustments necessary to account for the differences in style (one-and-one-half and two-story homes compared to one-story), age (differences of 26, 24, and 11 years in age), size and amenities. The Taxpayer's evidence of assessed value of these three comparables does not rise to the level of clear and convincing evidence that the assessed value of the subject property is not equalized with comparable property.

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).

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. 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).

6. The burden of persuasion imposed on the complaining taxpayer, in an appeal from a county board of equalization, is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed on the property when compared with 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. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 524 (2001).
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. *Cabela's, Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).
8. The burden on the taxpayer in an equalization proceeding is 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).

9. The Taxpayer has failed to adduce sufficient clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Board's decision must accordingly be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Lancaster 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 16, Block 8, Van Dorn Park Addition, City of Lincoln, Lancaster County, Nebraska, more commonly known as 2630 South 13th Street, shall be valued as follows for tax year 2003:

Land	\$ 20,000
Improvements	\$ 86,300
Total	\$106,300
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 Lancaster County Treasurer, and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003).
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 11th day of March, 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) (Reissue 2003).

Signed and sealed this 12th day of March, 2004.

SEAL

Wm. R. Wickersham, Chair