

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

ANNA W. CALHOUN REVOCABLE TRUST,	)	
	)	
Appellant,	)	CASE NO. 03R-176
	)	
vs.	)	FINDINGS AND
	)	FINAL ORDER
LANCASTER COUNTY BOARD OF EQUALIZATION,	)	
	)	
Appellee.	)	

Appearances:

For the Appellant: Charles D. Calhoun  
3605 Hillside Circle  
Lincoln, NE 68508

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

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

**I.  
STATEMENT OF THE CASE**

The Anna W. Calhoun Revocable Trust ("the Taxpayer") owns an improved tract of land legally described as Lot 7, Block 1, Broadview First Addition, City of Lincoln, Lancaster County, Nebraska. (E9:2). The tract of land is improved with a one-and-a-half storey, single-family residence with 4,432 square feet of above-grade finished living area originally built in 1966.

(E9:4).

The Lancaster County Assessor ("the Assessor") determined that the actual or fair market value of the Taxpayer's real

property was \$366,200 as of the January 1, 2003, assessment date. (E1). The Taxpayer timely filed a protest of that determination and alleged that the actual or fair market value of the property was \$260,000. (E3:13). The Lancaster County Board of Equalization ("the Board") granted the protest in part and determined that the actual or fair market value of the subject property was \$310,000 as of the assessment date. (E1). The Taxpayer 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 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 15, 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 10, 2004. The Taxpayers appeared personally at the hearing. The Board appeared through Michael E. Thew, Chief Deputy, Civil Division, Lancaster County Attorney's Office. Commissioners Hans, Lore, and Reynolds heard the appeal. Commissioner Wickersham was excused from the proceedings. Commissioner Reynolds served as the presiding officer. Each Party was afforded the opportunity to present evidence and argument at the hearing before the Commission as required by law.

The Board, at the close of the Taxpayer's case-in-chief, moved to dismiss the appeal for failure to prove a *prima facie* case.

**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 Taxpayer adduced no documentary evidence of actual or fair market value of any "comparable" properties.
2. The Taxpayer's opinion of actual or fair market value of the subject property is \$260,000. The basis for the Taxpayer's opinion of value is the purchase price paid.
3. The Taxpayer, at the hearing before the Board, adduced a "fee" appraisal of the subject property as of March 14, 2003. (E3:26). The "fee" appraisal established an actual or fair market value of \$310,000. (E3:26).

**V.  
ANALYSIS**

The only issue presented is the actual or fair market value of the Taxpayer's real property as of the January 1, 2003, assessment date. The Taxpayer's only evidence of actual or fair market value is opinion testimony based on the price paid for the subject property. 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 Taxpayer alleges the purchase price paid is controlling evidence of actual or fair market value. There is authority for

the proposition that the purchase price should be given strong consideration in determining actual or fair market value. *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982). Purchase price alone, however, is not conclusive evidence of the actual value of property for assessment purposes. *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2D 631, 637, (1998).

The uncontroverted evidence establishes that the Taxpayer adduced a copy of a fee appraisal for the subject property at the hearing before the Board. The appraisal had an effective date of March 14, 2003 and indicated the actual or fair market value of the subject property as of that date was \$310,000. (E3:26). The Board, based on that fee appraisal, determined that the actual or fair market value of the subject property was \$310,000 as of the assessment date. (E1).

The Taxpayer has adduced no evidence that the Board's decision was incorrect and either unreasonable or arbitrary. Evidence establishing a difference of opinion is insufficient to overcome the statutory presumption in favor of the Board. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 524 (2001). 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 incorrect and either

unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998). 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).
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 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. Evidence of sale price alone is insufficient to overcome the presumption that the board of equalization has valued the property correctly. Where the evidence discloses the circumstances surrounding the sale and shows that it was an arm's length transaction between a seller who was not under compulsion to sell and a buyer who was not compelled to buy, it should receive strong consideration. *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982).
7. "It is true that the purchase price of property may be taken into consideration in determining the actual value thereof

for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value." *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2D 631, 637, (1998).

8. 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).
9. 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 incorrect, and either unreasonable or arbitrary. *Bottorf v.*



*Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998).

10. The Taxpayer failed to adduce clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary. 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 Taxpayers' real property legally described as Lot 7, Block 1, Broadview First Addition, commonly known as 3605 Hillside Circle, in the City of Lincoln, Lancaster County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$ 41,600
Improvements	\$268,400
Total	\$310,000
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).

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 10<sup>th</sup> day of March, 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 10<sup>th</sup> day of March, 2004.

**SEAL**

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*William R. Wickersham, Chair*