

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

NATALIE D. CHAPMAN,)	
)	
Appellant,)	CASE NO. 03R-214
)	
vs.)	
)	
SARPY COUNTY BOARD OF)	FINDINGS AND
EQUALIZATION,)	FINAL ORDER
)	
Appellee.)	

Appearances:

For the Appellant: Natalie D. Chapman
211 Martin Drive
Bellevue, NE 68005

For the Appellee: Michael A. Smith, Esq.
Deputy Sarpy County Attorney
1210 Golden Gate Drive
Papillion, NE 68046

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

**I.
STATEMENT OF THE CASE**

Natalie D. Chapman ("the Taxpayer") owns a 4.43 acre tract of land legally described as Lots 12 & 13, Fontenelle Hills IV Addition, Sarpy County, Nebraska. (E17:1). The tract of land abuts Lot 2 of the Fontenelle Replat I, a 15.18 acre tract of land which is improved with an apartment complex. (E15). The subject property is abutted on the west and south by other single-family homes, and is abutted on the north and east by the apartment complexes. (E15). The tract of land is improved with a two-story, single-family residence with 3,143 square feet of

above-grade finished living area built in 1996. (E17:3). The value of the improvements is not at issue.

The Sarpy County Assessor ("the Assessor") determined that the actual or fair market value of the Taxpayer's real property was \$384,490 as of the January 1, 2003, assessment date.

(E17:1). The Assessor allocated \$107,150 of this value to the land component and \$276,340 to the improvement component.

(E17:1). The Taxpayer timely filed a protest of that determination and alleged that the actual or fair market value of the property was \$346,822. (E1:2). The Sarpy County Board of Equalization ("the Board") denied the protest. (E1:1).

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 18, 2003, which the Board answered on October 16, 2003. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on January 7, 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 18, 2004. The Taxpayer appeared personally at the hearing. The Board appeared through Michael A. Smith, Esq., Deputy Sarpy 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 then 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 to deny the Taxpayer's valuation protest concerning the land component of the subject property was incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determination of value for the land component 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)). 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 land component of the subject property was valued by Sarpy County at \$107,150 for tax year 2003.
2. The Taxpayer adduced no evidence of actual or fair market value of the land component of the subject property.

**V.
ANALYSIS**

The Taxpayer purchased the land component of the subject property in 1995 for \$50,000. (E1:3). The Taxpayer alleges that the Board's value for the land component for tax year 2003 (\$107,150) exceeds actual or fair market value. (E1:3; E17:1).

The Taxpayer adduced nine properties as "comparable" properties to the subject property for tax year 2003. (E11; E12; E14). No two parcels of land are exactly alike. Each parcel has a unique location and is likely to differ from other parcels in some way. Typical differences requiring adjustments are in time of sale, location, and physical characteristics. *Property*

Assessment Valuation, 2nd Ed., International Association of Assessing Officers, 1996, p. 76.

Any party utilizing comparable properties as evidence of value or as evidence of a lack of equalization is required to provide complete and legible copies of the County's Property Record File for those properties for the tax year at issue. Title 442, Neb. Admin. Code, ch. 5, §020.06 (12/03). See also Order for Hearing, ¶2, p. 3. The Taxpayer failed to provide the required documentation for the properties offered as "comparables." The Taxpayer adduced copies of information posted on the internet by the Assessor. That information contains no data concerning the size of the "comparable" properties. (E11:2; E12:2; E13:2).

The Taxpayer is presumed competent to testify regarding actual or fair market value. *U. S. Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999). The Taxpayer had no opinion of value for the land component of the subject property. The Taxpayer testified without objection that sometime in the last five years a real estate agent said that the subject property as improved was worth approximately \$350,000. The Taxpayer testified that there had been no change in the residential real estate market in the Fontenelle Hills neighborhood in the past five years. The Taxpayer was unable to

offer any evidence of the allocation of value between the land component and the improvements.

The property described in Exhibit 6 (the "Giff" property) is a 5.16 acre tract of land which is not located in the Fontenelle Hills neighborhood for assessment purposes and is not accessible from Fontenelle Hills, although the tract of land is very close to the subject property. (E15). The property described in Exhibit 7 is not located on the plat map which is Exhibit 15. The properties described in Exhibits 8 and 9 are not in the Fontenelle Hills neighborhood for assessment purposes and are approximately one-acre in size. The property described in Exhibit 10 is a tract of land at the foot of the very steep entrance to the Fontenelle Hills neighborhood. The property described in Exhibits 11, 12, and 13 is a single-tract of land which is fenced and owned by one individual. This tract of land is not within the Fontenelle Hills neighborhood. The Taxpayer had no opinion of value for this property.

There is no evidence that, if comparable, the assessed values of the Taxpayer's "comparables" represent actual or fair market value. See, e.g., *Property Tax Administrator's 2003 Reports & Opinions for Sarpy County*, p. 57. The Taxpayer alleges that her assessed value does not represent actual or fair market value. Assuming without deciding that this is true, there is no

evidence that the assessed value of the Taxpayer's comparables represents actual or fair market value.

The Taxpayer also testified that the proximity of a public golf course, golf clubhouse and pool adversely impacted the actual or fair market value of the land component of the subject property. Although the pool was closed at the time of purchase, all of these items were present at the time of purchase. The Taxpayer adduced no evidence of the impact on actual or fair market value of these features.

The Taxpayer also testified that the proximity of an apartment complex on the land adjacent to the subject property adversely impacted actual or fair market value of the subject property. The apartment complexes were in existence at the time of purchase. The Taxpayer adduced no evidence of the impact on actual or fair market value of the existence of the adjacent apartment complex.

The Taxpayer alleged that the development of the property to the south adversely impacted actual or fair market value. One lot, Lot 3, was developed with a 6,000 square-foot ranch-style home. (E15. But see Exhibit 18:2 and Exhibit 18:3 which lists the Lot as Lot 6). Lot 4 was also developed. (Lot 7 on Exhibit 18:2 and Exhibit 18:3). These are the only two lots which the Taxpayer can see from her property. The Taxpayer adduced no

evidence of the impact on actual or fair market value of the development of the property to the south of the subject property.

The Taxpayer's evidence fails to establish that the Board's decision to deny the Taxpayer's valuation protest concerning the land component of the subject property was unreasonable.

The Taxpayer has failed to satisfy the burden of proof required by law. The Commission must therefore affirm the Board's decision.

**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. When comparing the assessed values of other properties with the subject property to establish value the other properties must be truly comparable to the subject property. *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998).
7. 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).

8. When a taxpayer fails to meet the burden of proof, the Board's decision must be affirmed. *Garvey Elevators, Inc. supra.*

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Board's Motion to Dismiss is granted.
2. The Sarpy County Board of Equalization's Order setting the assessed value of the subject property for tax year 2003 is affirmed.
3. The Taxpayer's real property legally described as Lots 12 and 13, Fontenelle Hills IV Addition, more commonly known as 211 Martin Drive, City of Bellevue, Sarpy County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$107,150
Improvements	\$276,340
Total	\$383,490

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 Sarpy County Treasurer, and the Sarpy 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 Lore made and entered the above and foregoing Findings and Orders in this appeal on the 18th day of March, 2004. The same were approved and confirmed by Commissioners Hans, 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 18th day of March, 2004.

SEAL

Wm. R. Wickersham, Chair