

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

JEFFERY J. GROB and KELLI A.)	
GROB,)	
)	CASE NO. 03R-307
Appellants,)	
)	
vs.)	FINDINGS AND
)	FINAL ORDER
SARPY COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

Appearances:

For the Appellant: Jeffery J. Grob and Kelli A. Grob
4106 Giles Road
Bellevue, NE 68147

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

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

**I.
STATEMENT OF THE CASE**

Jeffery J. Grob and Kelli A. Grob ("the Taxpayers") own a tract of land legally described as Lot 5, Hill Acres Addition, more commonly known as 4106 Giles Road, City of Bellevue, Sarpy County, Nebraska. (E7:1). The tract of land is improved with a single-family residence with 2,773 square feet of above-grade finished living area built in 1999. (E7:4).

The Sarpy County Assessor ("the Assessor") determined that the actual or fair market value of the Taxpayers' real property was \$276,130 as of the January 1, 2003, assessment date. (E7:1).

The Taxpayers timely filed a protest of that determination and alleged that the subject property was \$265,000. (E1:2). The Sarpy County Board of Equalization ("the Board") denied the protest. (E1:1).

The Taxpayers filed an appeal of the Board's decision on August 26, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 30, 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 Taxpayers 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 rested without adducing any testimonial evidence.

II.
ISSUES

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayers' valuation protest was incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determination of value was reasonable.

III.
APPLICABLE LAW

The Taxpayers are required to demonstrate by clear and convincing evidence (1) that the Board's decision was incorrect and (2) that the Board's determination of value 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 Taxpayers, 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 Taxpayers testified that the actual or fair market value of the subject property was \$255,000 as of the assessment date. This represents a 7.6% difference in value between the owners' opinion of value and the Board's determination of value.
2. The Taxpayers alleged that the proximity of a cell phone tower; high traffic volume; and proximity of farm animals adversely impacted the actual or fair market value of the subject property. The Taxpayers adduced no evidence quantifying the impact on actual or fair market value of these factors.

**V.
ANALYSIS**

The only issue presented is the actual or fair market value of the Taxpayers' real property as of the January 1, 2003, assessment date. The Taxpayers' only evidence of actual or fair market value is the Taxpayers' opinion testimony that the actual or fair market value was \$255,000 as of the assessment date. 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 did not substantiate her opinion of value with sales of comparable property. Evidence establishing a difference of opinion alone 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).

The Taxpayers alleged that the proximity of a cell phone tower adversely impacted actual or fair market value. (E1:1 - 2). The Taxpayers adduced no evidence quantifying the impact on actual or fair market value.

The Taxpayers alleged that the actual or fair market value of subject property was adversely impacted by the proximity of Giles Road, which is alleged to have a high traffic volume and is a route frequently used by emergency vehicles. (E1:1 - 2). The Taxpayers adduced no evidence establishing the difference, if any, in traffic volume or emergency vehicle traffic between the purchase date and the assessment date. The Taxpayers adduced no evidence quantifying the impact of the high traffic volume on actual or fair market value.

The Taxpayers alleged that the proximity of farm animals adversely impacted the actual or fair market value of the subject property. (E1:1 - 2). The Taxpayers alleged that feathers and bird noise in particular adversely impacted the actual or fair market value of the subject property. The Taxpayers adduced no

evidence that the farm animals were moved onto the neighboring property after the Taxpayers acquired the property and adduced no evidence quantifying the impact on actual or fair market value of this factor.

The Taxpayers failed to satisfy their burden of proof. The Board's decision must therefore 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).
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 Taxpayers present 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 Taxpayers. *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 Taxpayers, 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. Taxpayers who offer no evidence that the subject property is valued in excess of its actual value and who only produces evidence that is aimed at discrediting valuation methods utilized by county assessor fail to meet their burden of proving that value of the property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).
8. Based upon the applicable law, the Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayers establish 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).
9. Where the Taxpayers fail to satisfy the burden of proof the Commission must affirm the Board's decision. *Bottorf, supra*.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Sarpy County Board of Equalization's Order setting the assessed value of the subject property for tax year 2003 is affirmed.
2. The Taxpayers's real property legally described as Lot 5, Hill Acres Addition, more commonly known as 4106 Giles Road, City of Bellevue, Sarpy County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$ 35,000
Improvements	\$241,130
Total	\$276,130
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 Sarpy County Treasurer, and the Sarpy 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 Hans 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 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 19th day of March, 2004.

SEAL

Wm. R. Wickersham, Chair