

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

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|--------------------------|---|-----------------|
| MICHAEL J. PITI, et al., |) | |
| |) | |
| Appellants, |) | CASE NO. 03R-34 |
| |) | |
| vs. |) | |
| |) | FINDINGS AND |
| DOUGLAS COUNTY BOARD OF |) | FINAL ORDER |
| EQUALIZATION, |) | |
| |) | |
| Appellee. |) | |

Appearances:

For the Appellant: Michael J. Piti
2521 North 160th Avenue
Omaha, NE 68116

For the Appellee: Erik C. Booth, Esq.
Deputy Douglas County Attorney
909 Civic Center
Omaha, NE 68183

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

**I.
STATEMENT OF THE CASE**

Michael J. Piti and others ("the Taxpayer") own an improved tract of land legally described as Lot 170, Huntington Park Addition, City of Omaha, Douglas County, Nebraska. (E8:2). The tract of land is improved with a single family residence built in 1999. (E8:2). The house has 3,840 square feet of above-grade living area, a walk-out basement that is partially finished, a three-car garage, and other amenities. (E8:7). The Taxpayer purchased the subject property in November, 2002, for \$440,000, which included some personal property. (E8:4).

The Douglas County Assessor ("the Assessor") determined that the actual or fair market value of the Taxpayer's real property was \$440,100 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 \$375,000. (E12:1). The Douglas County Board of Equalization ("the Board") granted the protest in part and determined that the equalized value of the property was \$419,700 as of the assessment date. (E1).

The Taxpayer filed an appeal of the Board's decision on August 14, 2003. The Commission served a Notice in Lieu of Summons on the Board on August 25, 2003, which the Board answered on September 5, 2003. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on December 12, 2003. 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 2, 2004. Michael J. Piti appeared personally at the hearing. The Board appeared through Erik C. Booth, Deputy Douglas County Attorney.

The only issue before the Commission is whether the assessed value of the subject property is equalized with comparable

properties. The Board moved to dismiss the appeal at the close of the Taxpayer's case-in-chief.

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 determination of 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 evidence of only one property for which the level of assessment can be determined. The level of assessment for that property is 111%, based on a sale which took place eight months after the assessment date.
2. The Taxpayer testified that in his opinion the actual or fair market value of the subject property was between \$410,000 and \$420,000 as of the assessment date. This would indicate a level of assessment of between 102% and 100%.

**V.
ANALYSIS**

**A.
ACTUAL OR FAIR MARKET VALUE**

The only evidence of value is the Taxpayer's opinion of actual or fair market value of between \$410,000 and \$420,000. The level of assessment for the subject property is between 102% and 100% based on this evidence. [$\$419,700 \div \$410,000 = 102\%$. $\$419,700 \div \$420,000 = 100\%$].

**B.
EQUALIZED VALUE OF THE SUBJECT PROPERTY**

The Taxpayer alleged before the Board that the assessed value of the subject property was not equalized with comparable

properties. (E12:1). The Taxpayer adduced information concerning the assessed value of one "comparable" property. (E3). This property sold on August 29, 2003. (E4). The Board was required to complete its equalization proceedings on or before July 25, 2003. Neb. Rev. Stat. §77-1502 (Reissue 2003). The Taxpayer's "comparable sale" occurred more than a month after the Board was required to conclude its 2003 equalization proceedings. The level of assessment for that property, based on the August 2003 sale, was 111%. [$\$405,600 \div \$367,000 = 111\%$.]

This single sale does not establish that the Board's decision was incorrect and either unreasonable or arbitrary. This sale does not establish a lack of equalization in assessed values of single-family residential properties in the Huntington Park Subdivision of Omaha for tax year 2003.

The Taxpayer also presented a spreadsheet listing thirteen "comparable" properties in support of his allegation that the assessed value of his property was not equalized with "comparable" properties. (E5). 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. All information used to set the assessed value of the comparable properties for the tax year at issue shall be included. (*Order for Hearing, ¶2, p. 3*). The Taxpayer

failed to provide any documentation for the properties offered as "comparables."

"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. There is no evidence in the record describing the inventory of physical characteristics of the allegedly "comparable" properties. There is no documentary evidence that the Taxpayer's "comparable" properties are located in the Huntington Park Subdivision, and there is no evidence of the actual or fair market value of those properties, or the 2003 level of assessment for those properties. The only information contained in Exhibit 5 establishes that there was an increase in the assessed values of those properties between tax year 2002 and 2003. (E5). The prior year's assessment is not relevant to the subsequent year's valuation. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

The Taxpayer in an equalization appeal is required to adduce clear and convincing evidence that the assessed value of his property is grossly excessive when compared with assessed values of other comparable property. *Cabela's, Inc.*, supra. The

Taxpayer has failed to meet his burden of proof. The Board's Motion must accordingly be granted. *Garvey Elevators, supra.*

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. 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. Where it is impossible to secure both the standards of the true value of a property for taxation and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).
6. 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).

7. The prior year's assessment is not relevant to the subsequent year's valuation. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).
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 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).
9. The Taxpayer has failed to adduce any clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Board's Motion to Dismiss must accordingly be granted.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Board's Motion to Dismiss for failure to prove a prima facie case is granted.
2. Therefore the Douglas County Board of Equalization's Order equalizing the assessed value of the subject properties for tax year 2003 is affirmed.
3. The Taxpayer's real property legally described as Lot 170, Huntington Park Addition, more commonly known as 2521 North 160th Avenue, in the City of Omaha, Douglas County, Nebraska, shall be valued as follows for tax year 2003:

| | |
|--------------|-----------|
| Land | \$ 40,000 |
| Improvements | \$379,700 |
| Total | \$419,700 |

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 Douglas County Treasurer, and the Douglas 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 2nd day of March, 2004. Commissioner Hans dissented and would have equalized the assessed value of the subject property using the Board's three comparable sales and, based on the assessed value of the Board's Comparable Number 3 on Exhibit 7, page 4, would have set the assessed value of the subject property in the amount of \$406,233 for tax year 2003. Commissioners Reynolds and Wickersham approved and confirmed Commissioner Lore's Order. The order of the majority of the Commission is deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Reissue 2003).

Signed and sealed this 3rd day of March, 2004.

SEAL

Wm. R. Wickersham, Chair