

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

ALICE A. NOTT, TRUSTEE, ALICE))	
A. NOTT REVOCABLE TRUST,))	
)	CASE NO. 03R-84
Appellant,))	
)	
vs.))	FINDINGS AND
)	FINAL ORDER
DODGE COUNTY BOARD OF))	
EQUALIZATION,))	
)	
Appellee.))	

Appearances:

For the Appellant: Alice A. Nott, Trustee
2293 Rosedale Road
Fremont, NE 68025

For the Appellee: Paul J. Vaughan, Esq.
Dodge County Attorney
P.O. Box 147
Fremont, NE 68026

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

**I.
STATEMENT OF THE CASE**

The Alice A. Nott Revocable Trust ("the Taxpayer") holds title to residential real property legally described as Tax Lot 24, a five-acre tract of land in Section 26, Township 18, Range 8, Dodge County, Nebraska. (E14:1; E14:2). The tract of land is improved with a single-family residence with 2,525 square feet of above-grade finished living area built in 1995. (E14:2). The subject property has 18-plumbing fixtures, four bedrooms, three and one-half bathrooms, a 2,462 square foot basement, of which 1,570 square feet is "partially finished," and a three-car

attached garage. (E14:2). The Taxpayer acquired the subject property in 2000 for \$378,000. (E14:1).

The State Assessing Official for Dodge County determined that the actual or fair market value of the Taxpayer's real property was \$389,100 as of the January 1, 2003, assessment date. (E1:2). The Taxpayer timely filed a protest of that determination and alleged that the equalized value of the property was \$281,890. (E1:2). The Dodge County Board of Equalization ("the Board") utilized the services of a referee as part of the protest process in 2003. The Board's referee recommended that the Taxpayer's equalization protest be denied. The Board denied the Taxpayer's equalization protest, but, in light of an inspection by the Assessing Official's Office, found that the actual or fair market value of the property was \$380,500 as of the assessment date. (E1:1).

The Taxpayer appealed the Board's decision on August 19, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 8, 2003, which the Board answered on September 25, 2003. The Commission issued an Amended Notice of Hearing to each of the Parties on January 14, 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 May 25, 2004. Alice A. Nott, Trustee for the Trust, appeared personally at the hearing. The Board appeared through Paul J. Vaughan, Esq., Dodge County Attorney. 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 to deny the Taxpayer's equalization protest was incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determination of the equalized value 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 subject property is assessed at 100% of actual or fair market value. (E1:1; Stipulation of Board).
2. The Taxpayer requests that the assessed value of the subject property be equalized with comparable properties at approximately 74% of actual or market value. (E1:2).

**V.
ANALYSIS**

The Taxpayer alleges that the assessed value of the subject property is not equalized with comparable residential real property within Dodge County, Nebraska. 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 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). If the taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. The burden is on the taxpayer to show by clear and convincing evidence that the valuation placed upon its property is grossly excessive when compared with valuation placed on other similar property. *Cabela's, Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).

The Taxpayer's property is a rural residential acreage in Dodge County, Nebraska. The Taxpayer's evidence includes assessment records of eight residential properties. The Taxpayer alleges that (1) these properties are comparable to the subject property; and (2) that the assessed values of these properties demonstrate by clear and convincing evidence that the assessed value of the subject property is not equalized. (E6 - E13).

"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 "comparables" to determine value, similarities and differences between the subject property and the comparables must be recognized. *Property Assessment Valuation*, 2nd Ed., 1996, p.103. Most adjustments are for physical characteristics. *Property Assessment Valuation*, 2nd Ed., 1996, p.105. "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 adduced the testimony of a licensed Nebraska real estate agent with 25-years of experience in the Fremont real estate market. The Taxpayer's witness testified that the Taxpayer's comparables range in level of assessment from 68% to 106% of value without accounting for any differences in (style), age, size, amenities, functional utility, and physical condition. (E6 - E13). This evidence does not rise to the level of clear and convincing evidence that the subject property alone is assessed at 100% of actual or fair market value.

**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. *Cabela's, Inc. v. Cheyenne County Bd. of*

Equalization, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).

6. The taxpayer has a right to relief if its property is assessed in excess of the value at which others are taxed. The burden is on the taxpayer, however, to show by clear and convincing evidence that the valuation placed upon their 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 Taxpayer has failed to establish by clear and convincing evidence that its property alone is assessed at 100% of actual or fair market value. The Board's decision accordingly must be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Dodge 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 Tax Lot 24, a five-acre tract of land in Section 26, Township 18, Range 8, Dodge County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$ 48,000
Improvements	\$332,500
Total	\$380,500

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 Dodge County Treasurer and the State Assessing Official for Dodge County, 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 25th day of May, 2004. Commissioner Hans dissented and would have granted the relief requested. The Findings and Order were, however, approved and confirmed by Commissioners 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 26th day of May, 2004.

SEAL

Wm. R. Wickersham, Chair