

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

JANICE ANITA CARR,)	
)	
Appellant,)	CASE NO. 03R-216
)	
vs.)	
)	FINDINGS AND
CASS COUNTY BOARD OF)	FINAL ORDER
EQUALIZATION,)	
)	
Appellee.)	

Appearances:

For the Appellant: Janice Anita Carr
100 East "F" Street
Weeping Water, NE 68463

For the Appellee: Nathan Cox, Esq.
Cass County Attorney
346 Main Street
Plattsmouth, NE 68048

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

**I.
STATEMENT OF THE CASE**

Janice Anita Carr ("the Taxpayer") owns a 11,700 square foot tract of land legally described as the W½ Lot 18 & All of Lot 19 & Vac Alley, Block 3, Weeping Water Park, Cass County, Nebraska. (E3:1). The tract of land is improved with a two-story, single-family residence with 1,392-square feet of above-grade finished living area built in 1900. (E3:3). The Taxpayer paid \$25,000 for the property in May, 2003.

The Cass County Assessor ("the Assessor") determined that the actual or fair market value of the Taxpayer's real property was \$81,337 as of the January 1, 2003, assessment date. (E1).

The Taxpayer timely filed a protest of that determination and alleged that the proposed value exceeded actual or fair market value. (E1:1). The Cass County Board of Equalization ("the Board") denied the protest. (E1).

The Taxpayer appealed 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 September 29, 2003. The Commission issued an Amended Order for Hearing and an Amended Notice of Hearing to each of the Parties on May 28, 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 September 7, 2004. The Taxpayer appeared personally at the hearing. The Board appeared through Nathan B. Cox, the Cass County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds 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 evidence.

**II.
ISSUES**

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayer's valuation protest was incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determination of 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, as amended by 2003 Neb. Laws, L.B.973, §51)). 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.
FINDING OF FACT**

The Commission finds and determines that the Taxpayer adduced no evidence of value.

**V.
ANALYSIS**

The Taxpayer paid \$25,000 for the subject property in May, 2003. The Property Record File establishes that a Foreclosure Deed was filed in December, 2002. (E3:1). The Taxpayer testified that she requested an interior inspection, and that request was denied. This evidence may be summarized as challenging the Assessor's valuation methods.

The only evidence which might be construed as evidence of value is the purchase price. The price paid, however, 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). The Taxpayer failed to adduce any evidence of actual or fair market value. The other evidence challenging valuation methods alone is insufficient to overcome the statutory presumption. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983). The Board, under these circumstances, is under no obligation to adduce any evidence. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998); Neb. Rev. Stat. §77-

5016(7) (Reissue 2003). The Board's decision must accordingly 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, as amended by 2003 Neb. Laws, L.B.973, §51).
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. A taxpayer who offers 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 fails to meet his or her burden of proving that value of the property was not fairly and proportionately equalized or that valuation placed upon 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).
6. 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); Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §51).

7. The Taxpayer has failed to adduce clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary.
8. The Board's decision must accordingly be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Cass County Board of Equalization's Order setting the subject property's assessed value for tax year 2003 is affirmed.
2. The Taxpayer's real property legally described as the W½ Lot 18 & All of Lot 19 & Vac Alley, Block 3, Weeping Water Park, Cass County, Nebraska, more commonly known as 601 East Eldora Avenue, shall be valued as follows for tax year 2003:

Land	\$10,413
Improvements	\$70,924
Total	\$81,337
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 Cass County Treasurer, and the Cass County Assessor,

pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).

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 7th day of September, 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 7th day of September, 2004.

SEAL

Wm. R. Wickersham, Chair