

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

FRANK J. WENTLING and	)	
PHYLLIS I. WENTLING,	)	
	)	CASE NO. 04R-109
Appellants,	)	
	)	
vs.	)	FINDINGS AND FINAL ORDER
	)	AFFIRMING DECISION OF THE
FRANKLIN COUNTY BOARD OF	)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,	)	
	)	
Appellee.	)	

**SUMMARY OF DECISION**

Frank J. Wentling and Phyllis I. Wentling appeal the Franklin County Board of Equalization's order granting the Taxpayers's 2004 valuation and equalization protest only in part. The Commission affirms the Board's decision.

**I.  
ISSUES**

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

**II.  
STATEMENT OF THE CASE**

The Taxpayers own a 2-acre tract of land legally described as Part of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 27, Township 2 North, Range 15

W, in Franklin County, Nebraska. (E1). The tract of land is improved with a single-family residence with 1,551 square feet of above-grade finished living area built in 1975 ("the subject property"). (E4:1).

The Franklin County Assessor determined that the subject property's actual or fair market value was \$89,465 as of the January 1, 2004, assessment date. (E1). The Taxpayers timely protested that determination and alleged that the subject property's actual or fair market value was \$71,584. (E1:2). The Board granted the protest in part and found that the subject property's actual or fair market value was \$88,935 as of the assessment date. (E1).

The Taxpayers appealed the Board's decision on August 23, 2005. The Commission served a Notice in Lieu of Summons on the Board which the Board answered. The Commission issued an Order for Hearing and Notice of Hearing and served a copy of the Order and Notice on each of the Parties.

The Commission called the case for a hearing on the merits of the appeal in the City of Kearney, Buffalo County, Nebraska, on July 26, 2005. The Taxpayers appeared personally at the hearing. The Board appeared through Patrick A. Duncan, Esq., the Franklin County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer.

**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 decision was unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9). 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 Taxpayer's only evidence of value is opinion testimony.
2. The Taxpayer failed to adduce any evidence of a lack of equalization.

**V.**  
**ANALYSIS**

The Taxpayers allege that the subject property's assessed value exceeds actual or fair market value and that the assessed value is not equalized with comparable properties. (E1:2).

The subject property was valued using the Cost Approach. The Cost Approach is one of the professionally accepted appraisal methodologies authorized by law. Neb. Rev. Stat. §77-112 (Reissue 2003). The Cost Approach requires an estimate of the total cost new of the improvements as of the appraisal date, including direct costs, indirect costs, and entrepreneurial profit from market analysis reduced by an estimate of the total amount of accrued depreciation attributable to physical deterioration, functional obsolescence, and external (economic) obsolescence. *Property Assessment Valuation*, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, pp. 128 - 129.

The Taxpayer testified that in her opinion the subject property's actual or fair market value was \$79,574 as of the assessment date. The Taxpayer further testified that the actual or fair market value of the improvement component was \$71,584. The Taxpayer testified that her opinion of value was based on a change in the Quality of Construction from "Good" to "Average." The Taxpayer testified in adjusting the Marshall-Swift Residential Cost Handbook Per Square Foot values to account for her requested change in "Quality of Construction" she estimated

the reductions based on cost factors shown on other Property Record Cards. The Taxpayer testified that after calculating the Replacement Cost New for the subject property improvements in this manner, she applied the same depreciation factors used by the Assessor and Board (Physical Depreciation 20% and Economic 25%) (E6:2).

The methodology employed by the Taxpayer does not result in clear and convincing evidence of value. The methodology used doesn't account for all of the cost factors necessary to determine the Replacement Cost New for the subject property. The cost factors for the components which are contained in the record, based on the *Marshall-Swift Residential Cost Handbook*, must be adjusted to account for the size of the individual components, since cost factors vary based on the size of those component. Furthermore, while an owner who is familiar with his property and knows its worth is permitted to testify as to its value, the burden of persuasion imposed on the complaining taxpayer, is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to 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. *US*

*Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).

The Taxpayer testified that in her opinion the value of the land component was \$7,990. The Taxpayer adduced no evidence in support of this opinion of value.

Finally, the Taxpayer alleged that the subject property's assessed value was not equalized with comparable properties. "Equalization" is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. "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). The Taxpayer has failed to meet her burden of proof under *Cabela's*.

## 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) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).

3. The Board is presumed to have faithfully performed its official duties. The Board is also presumed to have acted upon sufficient competent evidence to justify its decisions. 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. The Taxpayers have failed to adduce clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Taxpayers have also failed to adduce clear and convincing evidence that the Board's determination of value was unreasonable. The Board's decision must accordingly be affirmed.

**VII.  
ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:**

1. The Franklin County Board of Equalization's Order setting the subject property's 2004 assessed value is affirmed.
2. The Taxpayers' real property legally described as Part of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 27, Township 2 North, Range 15 West, Franklin County, Nebraska, shall be valued as follows for tax year 2004:

Land	\$ 8,490
Improvements	\$80,445
Total	\$88,935
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 Franklin County Treasurer, and the Franklin County Assessor, pursuant to Neb. Rev. Stat. §77-5016(9) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).



5. This decision shall only be applicable to tax year 2004.
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 26<sup>th</sup> day of July, 2005. 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) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §7).

Signed and sealed this 27<sup>th</sup> day of July, 2005.

**SEAL**

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*Wm. R. Wickersham, Chair*

ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE APPEAL MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW IN NEBRASKA REVISED STATUTE §77-5019 (REISSUE 2003, AS AMENDED BY 2005 NEB. LAWS, L.B. 15, §11). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.