

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

| | | |
|--|---|------------------------------|
| DIXIE R. MAUCH REVOCABLE TRUST, |) | |
| |) | |
| Appellant, |) | CASE NO. 04R-80 |
| |) | |
| vs. |) | FINDINGS AND FINAL ORDER |
| |) | REVERSING THE DECISION OF |
| FRANKLIN COUNTY BOARD OF EQUALIZATION, |) | COUNTY BOARD OF EQUALIZATION |
| |) | |
| Appellee. |) | |

SUMMARY OF DECISION

The Dixie R. Mauch Revocable Trust appeals the Franklin County Board of Equalization's order denying the Taxpayer's 2004 valuation and equalization protest. The Commission vacates and reverses the Board's decision, and grants the Taxpayer the relief requested.

**I.
ISSUES**

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayer's 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 Taxpayer owns a 6,336 square foot tract of land legally described as Lots 25 and 26, Block 2, Original Town of Franklin, Franklin County, Nebraska. (E6:1). The tract of land is improved with a single-family residence with 832 square feet of above-grade finished living area built in 1920 ("the subject property"). (E5:2).

The Franklin County Assessor determined that the subject property's actual or fair market value was \$17,405 as of the January 1, 2004, assessment date. (E1). The Taxpayer timely protested that determination and alleged that the subject property's actual or fair market value was \$10,000. (E1). The Board denied the protest. (E1).

The Taxpayer appealed the Board's decision on August 20, 2004. 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 those documents 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 26th, 2005. Dixie R. Mauch, Trustee for the Trust, 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 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) (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 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 last reappraisal of urban residential real property in Franklin County occurred in 1989. *2004 Reports and Opinion of the Property Tax Administrator*, p. 65.

2. The last depreciation study for urban residential real property in Franklin County occurred in 1990. *Supra*, p. 65.
3. The only credible evidence of value contained in the record is the Trustee's opinion (\$12,000).

V.
ANALYSIS

The Trustee alleges that the subject property's assessed value exceeds actual or fair market value. The uncontroverted evidence establishes that urban residential real property within Franklin County hasn't been reappraised since 1989, and that the last depreciation study was conducted in 1990. *Supra*, at p. 65. The Coefficient of Dispersion and the Price Related Differential are both outside of the acceptable range. *Supra at p. 26*. Given these facts, the Board did not act upon sufficient competent evidence in denying the Taxpayer's protest. The statutory presumption has therefore been extinguished.

An owner who is familiar with his property and knows its worth is permitted to testify as to its value. *US Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999). The owner's opinion of value (\$12,000) is competent and credible evidence of value. This opinion testimony is supported by evidence of the price paid (\$11,000) for a comparable property (E4) paid during the two-year sales study period conducted prior to the assessment date.

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 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. The Taxpayer has adduced clear and convincing evidence that the Board's decision was incorrect and both unreasonable and arbitrary. The Taxpayer has also adduced clear and convincing evidence that the Board's determination of value was unreasonable. The Board's decision must accordingly be vacated and reversed.

**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 vacated and reversed.
2. The Taxpayer's real property legally described as Lots 25 and 26, Block 2, Original Town of Franklin, more commonly known as 617 14th Avenue, shall be valued in the amount of \$12,000.
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 Lore made and entered the above and foregoing Findings and Orders in this appeal on the 26th day of July, 2005. The same were approved and confirmed by Commissioners Hans, 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 27th day of July, 2005.

SEAL

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.

PLEASE NOTE: You will only be notified of a change in assessed value for your property for tax year 2005 if the 2005 assessed value differs from the 2004 assessed value as determined by your Assessor or County Board of Equalization. The Commission's decision has no impact on that determination. You should contact your Assessor's Office after March 19, 2005, to determine your property's assessed value for 2005. If you are unsatisfied with that value, you must file a protest on or after June 1, and before July 1, 2005. If you fail to file a protest, there can be no change to the Assessor's determination of the 2005 assessed value for your property.