

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

RONALD J. STAUFFER,	)	
	)	
Appellant,	)	CASE NO. 04R-38
	)	
vs.	)	
	)	FINDINGS AND FINAL ORDER
MADISON COUNTY BOARD OF	)	REVERSING DECISION OF
EQUALIZATION,	)	COUNTY BOARD OF EQUALIZATION
	)	
Appellee.	)	

**SUMMARY OF DECISION**

Ronald J. Stauffer appeals the Madison County Board of Equalization's decision denying Mr. Stauffer's 2004 residential valuation protest. The Commission vacates and reverses the Board's decision.

**I.  
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.

**II.  
STATEMENT OF THE CASE**

The Taxpayer owns a 2,128 square foot tract of land legally described as Part of Lot 2, Country Club Village, City of Norfolk, Madison County, Nebraska. (E17:2). The tract of land

is improved with a single-family condominium with 1,546 square feet of above-grade finished living area built in 1978. (E17:3).

The Assessor determined that the subject property's actual or fair market value was \$136,872 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 \$125,550. (E1). The Madison County Board of Equalization ("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 on August 30, 2004, which the Board answered on September 8, 2004. The Commission issued an Order for Hearing and Notice of Hearing on February 2, 2005. 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 Norfolk, Madison County, Nebraska, on May 24, 2005. The Taxpayer appeared personally at the hearing. The Board appeared through Joel Carlson, Deputy Madison County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Wickersham 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 Taxpayer's opinion of the subject property's actual or fair market value was \$125,550 as of the January 1, 2004, assessment date.
2. The Taxpayer's 2004 assessed value was based on a 4% increase over the subject property's 2003 assessed value which was identical to the subject property's 2002 assessed value. The Assessor could not identify which professionally

accepted mass appraisal methodology was used to value the subject property in 2002.

3. The subject property's Cost Approach Value was based on a 1% physical depreciation factor for a 26 year old property. This depreciation factor was attributed to a remodel which purportedly reduced the subject property's effective age by 10 years. Nothing in the record establishes that such a remodel occurred.

## **V. ANALYSIS**

The Taxpayer's opinion of actual or fair market value was \$125,550 as of the January 1, 2004, assessment date. The property 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 Board's determination of value is based on an unknown or at least unidentified methodology. The inventory of physical characteristics for the subject property are wrong: there is no evidence that a remodel occurred; the condominium is not an end unit, but a middle unit; the exterior wall composition is wrong; and the physical size of the improvements have been corrected after the 2003 valuation, but no corresponding correction was made to the 2004 value even though the 2004 value was based on

the 2003 value. Under these facts, there is no presumption that the valuation is correct; the value is not supported by competent evidence and is legally erroneous. *Leech, Inc. v. Chase Cty. Bd. Of Equal.*, 176 Neb. 841, 846, 127 N.W.2d 917, 921 (1964).

The only competent evidence of value in the record before the Commission is that of the Taxpayer. The statutory presumption is extinguished, and the value as determined by the Board is, from the record before the Commission, unreasonable. The Board's decision must accordingly be vacated and reversed.

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

**VII.  
ORDER**

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

1. The Madison 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 Part of Lot 2, County Club Village, more commonly known as 604 Hesper Drive, in the City of Norfolk, Madison County, Nebraska, shall be valued as follows for tax year 2004:

Land	\$ 4,356
Improvements	\$121,194
Total	\$125,550
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 Madison County Treasurer, and the Madison 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 Reynolds made and entered the above and foregoing Findings and Orders in this appeal on the 24<sup>th</sup> day of May, 2005. The same were approved and confirmed by Commissioners Hans, Lore 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 24<sup>th</sup> day of May, 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.**

**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.