

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

JEFFREY T. MCCABE,)	
)	
Appellant,)	CASE NO. 04R-76
)	
vs.)	
)	FINDINGS AND FINAL ORDER
CASS COUNTY BOARD OF)	AFFIRMING DECISION OF
EQUALIZATION,)	COUNTY BOARD OF EQUALIZATION
)	
Appellee.)	

SUMMARY OF DECISION

Jeffrey T. McCabe protested the Cass County Assessor's proposed 2004 value for the his residential real property to the Cass County Board of Equalization. The Board granted the protest, but only in part. The Taxpayer appealed the Board's decision to the Commission, which affirms the Board's decision.

**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.
STATEMENT OF THE CASE

The Taxpayer owns a 3.44 acre tract of land legally described as Lot 26, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, Township 11, Range 9, in Cass County, Nebraska. (E14:1). The tract of land is improved with a structure which previously served as a school gymnasium. The Taxpayer converted part of the structure to a single-family residence with 2,608 square feet of above-grade finished living area. The Taxpayer testified that he completed remodeling of the subject property in 1989.

The Board, after the Taxpayer's protest, determined that the subject property's actual or fair market value was \$142,038 as of the January 1, 2004, assessment date. (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 November 18, 2004. The Answer was filed out of time, but with leave of the Commission. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on January 31, 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 Lincoln, Lancaster County, Nebraska, on May 18, 2005. The Taxpayer appeared personally at the hearing. The Board appeared through Nathan Cox, Esq., the Cass

County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer.

**IV.
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 does not dispute the Board's land component value (\$29,150); the assessed value of that part of the former school gymnasium which was not converted to

residential use (\$10,753); the assessed value of the concrete driveway (\$3,626); or the assessed value of the residential improvements exclusive of the solid wall porch (approximately \$81,979). (E14:4).

2. The Taxpayer does dispute the contribution to value of the detached garage and the solid wall porch. (E14:3 - 4).
3. The Taxpayer's only evidence of value is opinion testimony that the actual or fair market value of the subject property was \$122,000 to \$127,000 as of the assessment date.

V. ANALYSIS

The Taxpayer alleged that the increase over the prior year's assessment was excessive; that the subject property's location and nature of the improvements adversely impact actual or fair market value; and the contribution to value of the detached garage and the solid wall porch. (E2; E19:5).

The market value of real property usually changes from year to year. Changes made to the property since the last assessment will usually affect market value. Occasionally, the prior assessed value may be shown to be incorrect. The prior year's assessed value is therefore not relevant evidence of actual or fair market value in a subsequent year. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206

(1988). If the base for calculation of a percentage change is not relevant evidence then any calculation based on it cannot be relevant evidence. The percentage change in assessed value from year to year is therefore not relevant evidence that the current assessed value is incorrect and either unreasonable or arbitrary.

The Taxpayer also alleged that the subject property's location and nature of the improvements adversely impact actual or fair market value. The Taxpayer only adduced opinion evidence in support of these allegations. The Assessor valued the unconverted area of the former school gymnasium at \$2.25 per square foot. (E13). The Assessor also attributed a 20% Functional Depreciation factor to the residential improvements. (E14:3). The Taxpayer adduced no evidence that these factors and values were incorrect and either unreasonable or arbitrary.

Finally, the Taxpayer challenged the contribution to value of the detached garage and the solid wall porch. (E2; E19:5). The Taxpayer only adduced opinion evidence that these components were overvalued.

The Taxpayer's only evidence is opinion testimony. The burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion. *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999). The Taxpayer has failed to adduce clear and convincing evidence that the Board's decision was incorrect and

either unreasonable or arbitrary. 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) (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 failed to adduce clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary. 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 2004 assessed value is affirmed.
2. The Taxpayer's real property legally described as Lot 26, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, Township 11, Range 9, Cass County, Nebraska, shall be valued as follows for tax year 2004:

Land	\$ 29,150
Improvements	\$ 88,392
Outbuildings	\$ 24,496
Total	\$142,038

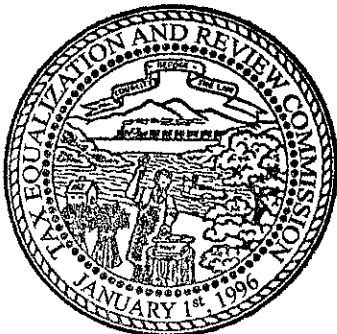
3. Any request for relief by any Party not specifically granted by this Order is denied.
4. This decision, if no appeal is filed, shall be certified to the Cass County Treasurer, and the Cass County Assessor, pursuant to Neb. Rev. Stat. §77-5016(9) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 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 18th day of May, 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 18th day of May, 2005.

SEAL



Wm. R. Wickersham
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.