

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

SUSAN A. ARCHULETA,)	
)	
Appellant,)	CASE NO. 04R-9
)	
vs.)	
)	FINDINGS AND FINAL ORDER
PLATTE COUNTY BOARD OF)	DISMISSING APPEAL AT THE
EQUALIZATION,)	CLOSE OF THE TAXPAYER'S
)	CASE-IN-CHIEF
Appellee.)	

SUMMARY OF DECISION

Susan A. Archuleta ("the Taxpayer") owns a single-family residence in the City of Columbus, Platte County, Nebraska. The Taxpayer protested the Platte County Assessor's ("the Assessor's") proposed 2004 value for the subject property to the Platte County Board of Equalization. The Board denied the Taxpayer's protest, and the Taxpayer appealed. The Board, at the close of the Taxpayer's case-in-chief, moved to dismiss the Taxpayer's appeal for failure to prove a prima facie case.

**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 5,499 square foot tract of land legally described as Lot 11, Block 11, Evanlawn Addition, City of Columbus, Platte County, Nebraska. (E15:1: E15:2). The tract of land is improved with a single-family residence with 1,428 square feet of above-grade finished living area built in approximately 1928 ("the subject property"). (E15:8).

The Assessor determined that the subject property's actual or fair market value was \$79,490 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 \$64,616. (E1). The Board denied the protest. (E1).

The Taxpayer appealed the Board's decision on July 29, 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 each document 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 October 31, 2005. The Taxpayer appeared personally at the hearing. The Board appeared through Andrea Belgau, Esq., the Platte 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 adduce evidence and argument. The Taxpayer adduced her own testimony and that of one witness. The Board, at the close of the Taxpayer's case-in-chief, moved to dismiss the Taxpayer's appeal for failure to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary.

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 either 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 value of land component (\$8,835) is not at issue.
2. The Taxpayer acquired the subject property on May 30, 2003, for \$85,150 in an arm's-length transaction.
3. The Taxpayer's "comparables" differ from the subject property.
4. The Taxpayer's requested actual or fair market value (\$64,616) is based on the 2003 assessed value plus a factor of approximately ten percent. The Taxpayer adduced no evidence correlating the requested value to actual or fair market value.

**V.
ANALYSIS**

The Taxpayer alleges that the subject property's assessed value exceeds actual or fair market value; that the Assessor's records are incorrect which resulted in an incorrect determination of actual or fair market value; and that the assessed value of three "comparable" properties supports the allegation that the subject property's improvements are overvalued.

The Taxpayer alleges that the Assessor's records are incorrect concerning physical features of the subject property

and other properties. (E15:5; E15:8). The Taxpayer, however, failed to adduce any evidence correlating these alleged errors to the indicated value. Further, the Taxpayer bears the burden of demonstrating that the Board's determination of value was unreasonable. *Garvey Elevators, supra*.

The Taxpayer paid \$85,150 for the subject property in an arm's-length transaction. Where the evidence discloses the circumstances surrounding the sale and shows that it was an arm's-length transaction between a seller who was not under compulsion to sell and a buyer who was not compelled to buy, the price paid for the property should receive strong consideration in determining actual or fair market value. *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982).

The Taxpayer contends, however, that the assessed value of three "comparable" properties establishes that the subject property's improvements are overvalued. (E10; E11; E12). "Comparable properties" share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 98. When using "comparables" to determine value, similarities and differences between the subject property and the comparables must be recognized. *Property Assessment Valuation*, 2nd Ed., 1996,

p.103. Most adjustments are for physical characteristics.

Property Assessment Valuation, 2nd Ed., 1996, p.105.

The subject property is a one-and-one-half story single family residence with 1,428 square feet of above-grade living area built in approximately 1928. (E15:8). The home is of "Average" Quality of Construction and "Good" Condition. (E15:8). The home has a basement which is 952 square feet in size. (E15:8). The property was owned by a hospital and used as office space. The subject property and two adjoining homes also owned by the hospital and used as offices were remodeled and returned to their original uses as single-family residences. The Taxpayer then purchased the property for use as a single-family property, and occupies the property.

The record for Taxpayer's first comparable is limited to a one-page excerpt from the Property Record File for property located at 2810 18th Street in Columbus. (E10). The home is a one-and-a-half story single-family residence with 1,680 square feet of above-grade finished living area. The home is of "Average" Quality of Construction and "Fair/Avg" Condition. (E10:1). The home has an unfinished basement which is approximately 1,120 square feet in size. (E10:1).

The record for Taxpayer's second comparable is limited to a one-page excerpt from the Property Record File for property located at 2816 17th Street in Columbus. (E11). The home is a

one-and-a-half story single-family residence with 1,418 square feet of above-grade finished living area. The home is of "Average" Quality of Construction and "Average" Condition. (E11). The home has a basement which is approximately 838 square feet in size, and approximately 100 square feet of that area has a minimal finish. (E10:1). This home has exterior walls made of "Asbestos." (E11).

The Taxpayer provided the Property Record File for the Taxpayer's third comparable. (E12). This property is located at 3102 19th Street in Columbus. (E12:1). This home is a one-story single-family residence with 704 square feet of above-grade finished living area. (12:4). The home is of "Average" Quality of Construction and "Fair/Avg" Condition. (E12:4). The home has an unfinished basement which is approximately 704 square feet in size. (E10:1).

The subject property's actual or fair market value may be established using assessed values of "comparable" properties. *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998). This methodology, however, requires a taxpayer to demonstrate by clear and convincing evidence that the properties offered as "comparables" are truly comparable and that the assessed values of the properties represent actual or fair market value. *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697,

584 N.W.2d 837, 843 (1998); *Westgate Recreation Ass'n v. Papio-Missouri River Natural Resources Dist.*, 250 Neb. 10, 17, 547 N.W.2d 484, 492 (1996). Mere assertions that the assessed value of the subject property is wrong and that the assessed values of "comparable" properties are right does not satisfy the burden imposed on the complaining taxpayer to show that the assessed values of the comparables equaled their actual or fair market values as of the assessment date. The Taxpayer's "comparables" are not truly comparable to the subject property. The Taxpayer did not adduce any evidence necessary to account for the differences between the subject property and the "comparable" properties.

The Taxpayer also alleges that the increase in assessed value over the prior year was excessive. (E1). 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 has failed to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Board, based upon the applicable law, need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998). The Board's Motion to Dismiss must accordingly be granted.

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).

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Board's Motion to Dismiss is granted.
2. The Taxpayer's real property legally described as Lot 11, Block 11, Evanlawn Addition, in the City of Columbus, Platte County, Nebraska, more commonly known as 3104 19th Street,

shall be valued as follows for tax year 2004, as determined by the Board:

Land	\$ 8,835
Improvements	\$70,655
Total	\$79,490

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 Platte County Treasurer, and the Platte 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 31st day of October, 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 1st day of November, 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.