

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

|                       |   |                            |
|-----------------------|---|----------------------------|
| GAYLE A. DAVIS,       | ) |                            |
|                       | ) |                            |
| Appellant,            | ) | CASE NO. 04R-166           |
|                       | ) |                            |
| vs.                   | ) |                            |
|                       | ) | FINDINGS AND FINAL ORDER   |
| DAWES COUNTY BOARD OF | ) | DISMISSING APPEAL AT THE   |
| EQUALIZATION,         | ) | END OF THE TAXPAYER'S CASE |
|                       | ) |                            |
| Appellee.             | ) |                            |

**SUMMARY OF DECISION**

Gayle A. Davis ("the Taxpayer") owns a single family residence on a 20.68-acre tract of land in Dawes County, Nebraska. The Taxpayer protested the Dawes County Assessor's proposed 2004 value for the Taxpayer's property to the Dawes County Board of Equalization. The Board denied the Taxpayer's protest, and the Taxpayer appeals.

**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 20.68-acre tract of land legally described as Part of the W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$  in Section 11, Township 32

North, Range 47 W, Dawes County, Nebraska. (E4:1). The tract of land is improved with a two-story, single-family residence with 2,422 square feet of above-grade finished living area built in 1988. (E4:2).

The Dawes County Assessor ("the Assessor") determined that the subject property's 80% of the actual or fair market value of the agricultural land component and 100% of the non-agricultural real property was \$190,185 as of the January 1, 2004, assessment date. (E4:2). The Taxpayer timely protested the Assessor's determination of the value of the improvement component (\$228,135) and alleged that the value of that component was \$100,000 as of the assessment date. (E1). The Board granted the protest in part and found that the improvement component's actual or fair market value was \$168,100 as of the assessment date based on the Assessor's recommendation for a reduction in assessed value. (E1).

The Taxpayer appealed the Board's decision on August 23, 2004. The Commission served a Notice in Lieu of Summons on the Board which the Board answered. The Commission then 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 Scottsbluff, Scotts Bluff County, Nebraska, on August 30, 2005. The Taxpayer appeared personally

at the hearing. The Board appeared through Dennis King, Special Appointed Counsel to the Dawes County Board of Equalization. Commissioners Lore, Reynolds and Wickersham heard the appeal. Commissioner Hans was excused from the proceedings. Commissioner Wickersham served as the presiding officer.

The Commission afforded each of the Parties the opportunity to present evidence and argument. During the hearing the Parties stipulated and agreed that the correct information for the 2004 Notice of Valuation Change Statement should have reflected the following for tax year 2003:

Total 2003 Value      \$103,015

The Board moved to dismiss the Taxpayer's appeal at the close of the Taxpayer's case-in-chief 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 Taxpayer's only evidence of actual or fair market value for the improvement component is opinion testimony.
2. The Taxpayer adduced no other evidence from which the actual or fair market value of property's improvements might be determined.

#### **V. ANALYSIS**

The Taxpayer purchased the subject property in 1981 and started construction of the residential improvements in 1996. (E2). The Taxpayer didn't complete construction of the improvements until the middle of 2004 and the Taxpayer and her family moved into the home at that time. The home has a steel roof, vinyl siding, and is "earth bermed" on two sides.

The Taxpayer, a newspaper publisher, and her husband, a welder for the Burlington Northern Santa Fe Railroad, built the improvements. (Testimony of Taxpayer.) The Taxpayer paid to have a well sunk on the property, and she and her husband installed the septic system. The Taxpayer was unable to testify as to any building permits or certificates of occupancy which might be required in Dawes County.

State law provides that actual value may be determined using the Sales Comparison Approach, the Income Approach, or the Cost Approach. Neb. Rev. Stat. §77-112. (Reissue 2003). The Taxpayer testified that there were no comparable properties in Dawes County. The Taxpayer adduced no evidence in the form of sales of comparable properties and no evidence of assessed values of comparable properties. The Taxpayer was unable to document the cost of materials, the number hours she and her family spent in building the house, the value of her time and her family's time spent in building the house, and adduced no other evidence from which the value of the subject property could be derived under the Cost Approach. There is, therefore, no evidence which might establish that the Board's decision was incorrect and either unreasonable or arbitrary.

The Board then moved to dismiss the Taxpayer's appeal. 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 [incorrect and either] unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998); Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004).

**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 any evidence that the Board's decision was incorrect and either unreasonable or arbitrary.
6. The Board's Motion to Dismiss must accordingly be granted. *Bottorf, supra.*

**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 Part of the W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$  in section 11, Township 32N, Range 47W, in County, Nebraska, shall be valued as follows for tax year 2004:

Land                   \$ 22,085

Improvements       \$168,100

Total                 \$190,185

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 Dawes County Treasurer, and the Dawes 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 30<sup>th</sup> day of August, 2005. The same were approved and confirmed by Commissioners 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 31<sup>st</sup> day of August, 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.