

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

DANA CICOTELLO,)	
)	CASE NO. 02R-13
Appellant,)	02R-14
)	02R-15
vs.)	
)	FINDINGS AND ORDER
ADAMS COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

Appearances:

For the Appellant: Mr. Dana Cicotello
2153 South Eagle Court
Aurora, CO 80014

For the Appellee: Charles Hamilton, Esq.
Deputy Adams County Attorney
P.O. Box 71
Hastings, NE 68901

Before: Commissioners Lore, Wickersham and Reynolds.

Wickersham, Vice-Chair, for the Commission.

**I.
STATEMENT OF THE CASE**

The Taxpayer owned three parcels of residential real property as of the January 1, 2002, assessment date. The first property is located at 719 Turner Avenue in the City of Hastings, Adams County, Nebraska. (E1). The property, the subject of the appeal in Case Number 02R-13, is a tract of land approximately 5,000 square feet in size. (E22:4). The tract of land is improved with a single-family residence built in 1925. (E25). The Taxpayer purchased this property in 1999 for \$60,000. The Taxpayer sold this property in December of 2002 for \$70,500. The

Assessor determined that the actual or fair market value of this property was \$81,225 as of the January 1, 2002, assessment date. (E1). The Taxpayer timely filed a protest of that determination, and asked the Adams County Board of Equalization to find the actual or fair market value was \$66,500. (E1). The Board granted the protest in part and found that the actual or fair market value was \$75,000 as of the assessment date. (E1).

The second property is located at 600 "C" Street in the City of Hastings, Adams County, Nebraska. The property, the subject of the appeal in Case Number 02R-14, is a tract of land approximately 10,545 square feet in size. (E36:3). The tract of land is improved with a single-family residence built in 1920. (E31). The Assessor determined that the actual or fair market value of this property was \$26,855 as of the January 1, 2002, assessment date. (E2). The Taxpayer timely filed a protest of that determination, and asked the Adams County Board of Equalization to find the actual or fair market value was \$19,380. (E1). The Board denied the protest.

The third property is located at 604 East "C" Street in the City of Hastings, Adams County, Nebraska. The property is the subject of the appeal in Case Number 02R-15. The property is a tract of land approximately 10,545 square feet in size. (E36:3). The tract of land is improved with a single-family residence built in 1920. (E42). The Assessor determined that the actual

or fair market value of this property was \$19,380 as of the January 1, 2002, assessment date. (E3). The Taxpayer timely filed a protest of that determination, and asked the Adams County Board of Equalization to find the actual or fair market value was \$19,380. (E3). The Board granted the protest in part and found that the actual or fair market value of the property was \$27,380 as of the assessment date. (E3).

The Taxpayer timely filed appeals of each of the Board's decisions to the Commission. The Commission served a Notice in Lieu of Summons on the Board in each case on or about August 26, 2002. The Board timely filed Answers in each appeal. The Commission consolidated the three appeals for purposes of hearing, and issued a Second Amended Notice of Hearing on October 24, 2003. The Commission called the appeals for hearing on the merits in the City of Lincoln, Lancaster County, Nebraska, on October 28, 2003.

Mr. Dana Cicotello appeared personally at the hearing. The Adams County Board of Equalization appeared through Charles Hamilton, the Deputy Adams County Attorney.

The Board, after the Taxpayer rested his case, rested without presenting any evidence.

**II.
ISSUE**

The only issue before the Commission is the actual or fair market value of each of the properties as of the January 1, 2002, assessment date.

**III.
APPLICABLE LAW**

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the decision of the Board was incorrect and (2) that the decision of the Board was unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002)). 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 value as determined by the County 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 Assessor failed to inspect any of the subject properties.
2. The Assessor's records do not list the correct physical characteristics for any of the subject properties.
3. The actual or fair market value of the property in Case Number 02R-13 was \$66,500 as of the assessment date.
4. The property in Case Number 02R-14, the property located at 600 East "C" Street, has no plumbing, no electric service, no natural gas service, and no Occupancy Certificate. The property is uninhabitable. The actual or fair market value of this property as of the assessment date was \$19,380.
5. The property in Case Number 02R-15, the property located at 604 East "C" Street, is a one-and-a-half story home with an unfinished attic, contrary to information listed on Exhibit 36, page 3. The home has no plumbing, no electric service, no natural gas service, and no Occupancy Certificate. The property is uninhabitable. The actual or fair market value of this property as of the assessment date was \$19,380.

V.
ANALYSIS

The Assessor failed to inspect any of the subject properties. This failure of duty extinguishes the statutory presumption in favor of the Board. The only issue is whether the Board's value for each property was reasonable.

The Taxpayer testified in Case Number 02R-13 that in his opinion the actual or fair market value of the subject property was \$66,500. The Taxpayer testified that the located at 600 East "C" Street (Case Number 02R-14) property was uninhabitable. The Taxpayer testified in his opinion that the actual or fair market value of the property was \$19,380 as of the assessment date. The Board's value (\$26,855) is purportedly based on the sale of comparable properties. (E31). The Taxpayer testified in his opinion that the actual or fair market value of the property located at 604 East "C" Street (Case Number 02R-15) was \$19,380 as of the assessment date. The Board's value (\$27,380) is purportedly based on the sale of comparable properties. (E42).

"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.

Each of the comparable properties were capable of human occupancy. The subject properties in Case Numbers 02R-14 and 02R-15 were not. The "comparables" are not truly comparable. The Board's determination of value was unreasonable.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and 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 action of the Board was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002).
3. The Board is presumed to have faithfully performed its official duties in determining the actual or fair market value of the property. The Board is also presumed to have acted upon sufficient competent evidence to justify its decision. These presumptions remain until the Taxpayer presents competent evidence to the contrary. If the presumption is extinguished the reasonableness of the valuation fixed by the board of equalization 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. Where an assessor fails to personally inspect the property, the presumption as to the validity of the official assessment is extinguished. *Grainger Bros. Co. v. County Bd. of Equalization*, 144 N.W.2d 161, 169 (1966).
 5. An owner who is familiar with his property and knows its worth is competent to testify to value. *U.S. Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).
 6. When comparing prices of other properties with the subject property to determine actual value the properties must be truly comparable. *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998).
 7. The Board's values were based on improper application of the Sales Comparison Approach. The resulting values in each of the appeals was unreasonable.
 8. The Board's decisions must be vacated and reversed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The orders of the Adams County Board of Equalization setting the assessed value of the subject properties for tax year 2002 are vacated and reversed.

2. The Taxpayer's residential real property in Case Number 02R-13, legally described as the North 50 feet of Lot 7, College Addition, Block 8, in the City of Hastings, Adams County, Nebraska, more commonly known as 719 Turner Avenue, shall be valued as follows for tax year 2002:

Land	\$ 3,500
Improvements	\$63,000
Total	\$66,500

3. The Taxpayer's residential real property in Case Number 02R-14, legally described as Lot 1, Cicotello's Subdivision, City of Hastings, Adams County, Nebraska, more commonly known as 600 East "C" Street, shall be valued as follows for tax year 2002:

Land	\$ 3,500
Improvements	\$15,880
Total	\$19,380

4. The Taxpayer's residential real property in Case Number 02R-15, legally described as Lot 2, Cicotello's Subdivision, in the City of Hastings, Adams County, Nebraska, more commonly

known as 604 East "C" Street, shall be valued as follows for tax year 2002:

Land	\$ 3,500
Improvements	\$15,880
Total	\$19,380

5. Any request for relief by any Party not specifically granted by this order is denied.
6. This decision, if no appeal is filed, shall be certified to the Adams County Treasurer, and the Adams County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002).
7. This decision shall only be applicable to tax year 2002.
8. 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 28th day of October, 2003. The same were approved and confirmed by Commissioner Reynolds and Commissioner Wickersham and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Cum. Supp. 2002).

Signed and sealed this 28th day of October, 2003.

SEAL

Wm. R. Wickersham, Vice-Chair