

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

SHARON L. JOHNSON,)	
)	
Appellant,)	CASE NO. 02R-7
)	
vs.)	DOCKET ENTRY
)	AND ORDER
HALL COUNTY BOARD OF)	DISMISSING THE
EQUALIZATION,)	APPEAL AT THE CLOSE OF THE
)	TAXPAYER'S CASE
Appellee.)	

The Nebraska Tax Equalization and Review Commission ("the Commission") called the above-captioned case for a hearing on the merits of the appeal on the 10th day of September, 2003. The hearing was held in the City of Kearney, Buffalo County, Nebraska, pursuant to a Notice of Hearing issued June 13, 2003. Commissioners Hans, Lore, Wickersham, and Reynolds heard the appeal. Commissioner Reynolds, Chair, presided at the hearing.

Glenn Johnson appeared on behalf of Sharon L. Johnson ("the Taxpayer") at the hearing before the Commission. The Hall County Board of Equalization ("the Board") appeared through Jerom E. Janulewicz, the Hall County Attorney. The Commission made certain documents a part of the record pursuant to Neb. Rev. Stat. §77-5016(5) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9). The Commission also afforded each of the parties the opportunity to present evidence and argument pursuant to Neb. Rev. Stat. §77-5015 (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §8). Each Party was also afforded the opportunity to cross-examine witnesses of the opposing party as

required by Neb. Rev. Stat. §77-5016 (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9).

Neb. Rev. Stat. §77-5018 (Cum. Supp. 2002) requires that every final decision and order entered by the Commission which is adverse to a party be stated in writing or on the record and be accompanied by findings of fact and conclusions of law. The Commission received, heard and considered the exhibits, evidence and argument. Thereafter it entered its Findings of Fact, Conclusions of Law, and a Final Order on the merits of the appeal on the record. Those matters, in substance, are set forth below:

I.
APPLICABLE LAW

The Taxpayer, in order to prevail, is required to demonstrate by clear and convincing evidence that (1) the decision of the Board was incorrect, and (2) that the decision of the Board was unreasonable and arbitrary. *Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9)*. The Supreme Court has determined that the "unreasonable or arbitrary" standard requires clear and convincing evidence that the Board either (1) failed to faithfully perform its official duties; or (2) that the Board failed to act upon sufficient competent evidence in making its decision. *Garvey Elevators v. Adams County Bd.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). 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, supra*, 136, 523-524 (2001).

**II.
FINDINGS OF FACT**

The Commission, from the record before it, finds and determines as follows:

**A.
PROCEDURAL FINDINGS**

1. The Taxpayer is the owner of record of certain residential real property located in Hall County, Nebraska ("the subject property").
2. The Hall County Assessor ("the Assessor") proposed valuing the subject property in the amount of \$260,017 for purposes of taxation as of January 1, 2002 ("the assessment date"). (E1).
3. The Taxpayer timely filed a protest of the proposed valuation and requested that the subject property be valued in the amount of \$188,251. (E1).
4. The protest alleged that the proposed value exceeded actual or fair market value. (E1).
5. The Board denied the protest. (E1).

6. Thereafter, the Taxpayer timely filed an appeal of the Board's decision to the Commission. (Appeal Form).
7. The Commission served a Notice in Lieu of Summons on the Board on August 26, 2002. The Board timely filed an Answer on August 27, 2002.
8. The Commission issued an Order for Hearing and Notice of Hearing on June 13, 2003. The Commission thereafter issued an Amended Notice of Hearing. The Amended Notice set the matter for a hearing on the merits of the appeal for September 10, 2003.
9. The Board, during the hearing before the Commission, objected to the Commission's consideration of sales of residential real property which occurred after the assessment date. The Commission sustained this objection.
10. The Board, during the hearing before the Commission, objected to the Commission's consideration of equalization between neighborhoods within Hall County, since the Taxpayer only raised the question of equalization within her neighborhood at the hearing before the Board. The Taxpayer's evidence of a lack of equalization with other neighborhoods consists primarily of sales which took place after the completion of the 2002 protest proceedings (July 24, 2002). (E2:4). The Commission sustained this objection.

11. The Taxpayer adduced Exhibit 6 during the course of the hearing. The Board objected to the receipt of this exhibit, which had not been provided prior to the hearing as required by the Commission's Order for Hearing. The Commission sustained this objection.
12. The Board moved to dismiss this appeal at the close of the Taxpayer's case in chief.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The subject property is a tract of a land legally described as Lot 1, Meadowlark Estates 3rd Subdivision, Hall County, Nebraska. (E4:9). The tract of land is approximately 1.83 acres in size. The tract of land is improved with a one-story, single-family residence built in 1976.
2. The Taxpayer's only evidence supporting her allegations is the sale of a "comparable" property is a tract of land smaller than that of the subject property. The tract of land is improved with one-and-a-half story single family residence built in 1979. (E2:35). The owner of this property died unexpectedly and with some notoriety on the property. The testimony establishes that everyone in the county knew of the death. This property sold at a public auction on June 21, 2002. (E2:34).

3. "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. "Financing terms, market conditions, location, and physical characteristics are items that must be considered when making adjustments . . ." *Property Assessment Valuation*, 2nd Ed., 1996, p. 98.
4. The only evidence of actual or fair market value of the subject property was the Taxpayer's husband's testimony that the actual or fair market value of the subject property was \$179,396.

III. 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 County was unreasonable or arbitrary. *Neb. Rev. Stat. §77-5016(7) (Cum. Supp.2002, as amended by 2003 Neb. Laws, L.B. 291, §9)*. The Nebraska Supreme Court, in considering similar language, has held that "There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence on appeal to the contrary. From that point on, 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 upon the taxpayer on appeal from the action of the board." *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).
3. The Supreme Court has also held that "In an appeal to the county board of equalization or to [the Tax Equalization and Review Commission] and from the [Commission] to this court, the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it

is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment." *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).

4. 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).

5. "Comparing assessed values of other properties with the subject property to determine actual value has the same inherent weakness as comparing sales of other properties with the subject property. 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).

6. The sale date of the Taxpayer's only comparable was almost 6 months after the assessment date.

7. The Taxpayer's "comparable" is not truly comparable to the subject property.
8. The Taxpayer failed to adduce any evidence that the Board's decision was incorrect. The Taxpayer failed to adduce any evidence that the Board's decision was unreasonable or arbitrary.
9. The Board's Motion must be granted.

**IV.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Board's Motion to Dismiss for failure to prove a prima facie case is granted, and this appeal is dismissed.
2. As a result of this decision the order of the County Board of Equalization setting the assessed value of the subject property for tax year 2002 is final.
3. Therefore the Taxpayer's residential real property legally described as Lot 1, Meadowlark Estates 3rd Subdivision, Hall County, Nebraska, will be valued as follows for tax year 2002, as determined by the Board:

Land	\$ 29,538
Improvements	\$230,479
Total	\$260,017

4. That any request for relief by any party not specifically granted by this order is denied.
5. That this decision, if no appeal is filed, shall be certified to the Hall County Treasurer, and the Hall County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9).
6. That this decision shall only be applicable to tax year 2002.
7. That 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 10th day of September, 2003. The same were approved and confirmed by Commissioners Hans and Wickersham, and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §6).

Signed and sealed this 12th day of September, 2003.

SEAL

Mark P. Reynolds, Chair