

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

SUZANNE L. CARUSO	)	
	)	
Appellant,	)	CASE NO. 03R-198
	)	
vs.	)	
	)	FINDINGS AND
DIXON BOYD COUNTY BOARD OF	)	FINAL ORDER
EQUALIZATION,	)	
	)	
Appellee.	)	

Appearances:

For the Appellant: Suzanne L. Caruso  
411 East Seventh Street  
Wakefield, NE 68784

For the Appellee: Leland K. Miner, Esq.  
Dixon County Attorney  
P.O. Box 563  
Ponca, NE 68770

Before: Commissioners Lore, Reynolds, and Wickersham.

**I.  
STATEMENT OF THE CASE**

Suzanne L. Caruso ("the Taxpayer") is one of the owners of a 1.43 acre tract of land legally described as Lot 2, Logan View Addition, City of Wakefield, Dixon County, Nebraska. (E2:10). The tract of land is improved with a two-story, single-family residence with 3,326 square feet of above-grade finished living area which was built in 1970. The Taxpayer acquired the property in December, 2002, for \$160,000.

The Dixon County Assessor ("the Assessor") determined that the actual or fair market value of the Taxpayers' real property

was \$203,530 as of the January 1, 2003, assessment date. (E2:10). The Taxpayer timely filed a protest of that determination and alleged that the actual or fair market value of the property was \$160,000. (E2:10). The Dixon County Board of Equalization ("the Board") granted the protest in part and determined that the actual or fair market value of the property was \$180,300. (E1).

The Taxpayer appealed the Board's decision on August 25, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 5, 2003, which the Board answered on September 17, 2003. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on October 14, 2004. 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 Norfolk, Madison County, Nebraska, on June 16, 2004. The Taxpayer appeared personally at the hearing. The Board appeared through Leland K. Miner, the Dixon County Attorney. Commissioners Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer. Commissioner Hans was excused from the proceedings.

The Commission then afforded each of the Parties the opportunity to present evidence and argument.

**II.**  
**ISSUES**

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayer's protest was incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determination of value was unreasonable.

**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 unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7)(Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51)). 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 paid \$160,000 for the subject property on December 21, 2002, in an arm's-length transaction.
2. The subject property is one of only five houses of "Good" Quality of Construction located in the area encompassed by Wayne and Dixon Counties. The subject property is the only one of the "Good" Quality of Construction houses which has sold.
3. The actual or fair market value of the subject property was \$160,000 as of the assessment date.

**V.  
ANALYSIS**

The Taxpayer alleges that the price paid for the subject property a few days prior to the assessment date establishes the actual or fair market value of the subject property.

The uncontroverted evidence establishes the Taxpayer acquired the property in an arm's-length transaction a few days prior to the assessment date. The property was for sale for two-years prior to the assessment date. The record also establishes that the Taxpayer was not a knowledgeable buyer concerning the real estate market for residential real property in Wakefield.

The Board's evidence, based on an inspection conducted October 21, 2002, notes that:

"House interior has not been updated since built. Great room added on in 1980 and pool house added in 1987. Exterior needs paint and soffit work; roof on great room is flat and had leaked at some time. Pipe broke in basement - water damage was repaired."

(E2:4).

The Taxpayer also testified that several hundred dollars worth of repairs had to be made to the sprinkler system and pool after purchase. None of these repairs had been made as of the assessment date.

The Board also adduced evidence without objection from the Taxpayer that the property has been listed for sale at \$184,000. (E2:3). The Exhibit recites that the property was listed at this price in a newspaper dated May 8, 2004. The Taxpayer testified that the property has been for sale for six-months at this price, and has not sold.

The uncontroverted evidence establishes that this house is the only house of "Good" Quality of Construction which sold in the area encompassed by Dixon and Wayne Counties. The Supreme Court has held a single sale may in some instances provide evidence of market value. The Court has further held that a single sale should not be excluded merely because it is a single

sale. *Firethorn Inv. v. Lancaster County Bd. of Equalization*, 261 Neb. 231, 240, 622 N.W.2d 605, 611 (2001)(Citations Omitted). The Court has also held that where the sale 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, it should receive strong consideration. *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982).

The Commission, from the entire record before it, finds and determines that the actual or fair market value of the subject property was the price paid in an arm's-length transaction a few days prior to the assessment date. The Taxpayer has met her burden of persuasion. The Board's decision to grant the protest only in part was incorrect, unreasonable and arbitrary. The Board's determination of value was also unreasonable. The Board's decision must accordingly be vacated and reversed.

## 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) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).

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 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. 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, it should receive strong consideration. *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982).

6. The Supreme Court has held that " . . . a single sale may in some instances provide evidence of market value. We have recognized that in tax valuation cases, actual value is largely a matter of opinion and without a precise yardstick for determination with complete accuracy. A single sale should not be excluded merely because it is a single sale. Rather, the fact that evidence of other sales is not presented goes to the weight of the evidence. *Firethorn Inv. v. Lancaster County Bd. of Equalization*, 261 Neb. 231, 240, 622 N.W.2d 605, 611 (2001)(Citations Omitted).
7. The Taxpayer has met her burden of proof. The Board's decision must accordingly be vacated and reversed.

**VII.  
ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:**

1. The Dixon County Board of Equalization's Order setting the assessed value of the subject property for tax year 2003 at \$180,300 is vacated and reversed.

2. The Taxpayer's real property, legally described as Lot 2, Logan View Addition, City of Wakefield, Dixon County, Nebraska, shall be valued as follows for tax year 2003:
 

Land	\$ 8,175
Improvements	\$151,825
Total	\$160,000
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 Dixon County Treasurer, and the Dixon County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).
5. This decision shall only be applicable to tax year 2003.
6. Each Party is to bear its own costs in this matter.

**IT IS SO ORDERED.**

**I certify that Commissioner Lore entered the above and foregoing Findings and Orders in this appeal on the 16<sup>th</sup> day of June, 2004. 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) (Reissue 2003).**

Signed and sealed this 17<sup>th</sup> day of June, 2004.

**SEAL**

---

*Wm. R. Wickersham, Chair*