

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

MICHAEL H. JACOBS and JULIET)	
A. JACOBS,)	
)	CASE NO. 04R-103
Appellant,)	
)	
vs.)	FINDINGS AND FINAL ORDER
)	GRANTING RELIEF
CASS COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

Appearances:

For the Appellant: Michael H. Jacobs
9306 Milford Road
Plattsmouth, NE 68048

For the Appellee: Nathan B. Cox, Esq.
Cass County Attorney
346 Main Street
Plattsmouth, NE 68048

Before: Commissioners Hans, Reynolds and Wickersham.

**I.
STATEMENT OF THE CASE**

Michael H. Jacobs and Juliet A. Jacobs own a tract of land legally described as Lot 1867A, Beaver Lake, Cass County, Nebraska. (E9). The tract of land is improved with a single-family residence with 1,502 square feet of above-grade finished living area built in 1995. (E9:5). The owners purchased the subject property on April 21, 2004, for \$238,000. (E8:1).

The Cass County Assessor ("the Assessor") determined that the subject property's actual or fair market value was \$255,624 as of the January 1, 2004, assessment date. (E1). The Taxpayer

timely protested that determination and alleged that the subject property's equalized value was \$228,404. (E1). The Cass County Board of Equalization ("the Board") denied the protest. (E1).

Mike H. Jacobs ("the Taxpayer") appealed the Board's decision on August 23, 2004. The Commission served a Notice in Lieu of Summons on the Board on September 2, 2004, which the Board answered on September 7, 2004. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on December 15, 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 Lincoln, Lancaster County, Nebraska, on March 29, 2005. The Taxpayer appeared personally at the hearing. The Board appeared through Nathan B. Cox, Esq., the Cass County Attorney. Commissioners Hans, Reynolds and Wickersham heard the appeal. Commissioner Lore 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. The Board rested without calling any witnesses.

**II.
ISSUES**

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayer's valuation and equalization 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) (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 opinion of actual or fair market value was \$238,000 as of the January 1, 2004, assessment date.
2. The Taxpayer acquired the subject property on April 21, 2004, for \$238,000 in an arm's-length transaction.
3. Nothing in the record explains which professionally accepted mass appraisal methodology was used by the Board to value the subject property for tax year 2004.

**V.
ANALYSIS**

The Taxpayer alleges that the subject property's assessed value exceeded actual or fair market value as established by the price paid for the subject property on April 21, 2004. The assessment date in this appeal was January 1, 2004. Neb. Rev. Stat. §77-1301 (1) (Cum. Supp. 2004). The issues presented in this appeal are (1) whether the price paid establishes actual or fair market value; and (2) if so, whether the assessed value which exceeded the price paid by approximately 7% establishes that the Board's decision was incorrect and either unreasonable or arbitrary.

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 purchase price of property standing alone, however, is not conclusive of the actual value of property for assessment purposes. *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2D 631, 637, (1998).

The record here establishes that the purchase was not between relatives or business partners, or otherwise related persons. The record further establishes that neither the buyers nor the seller were under any compulsion to enter into the transaction. Finally, there is no other clear and convincing evidence of value in the record. The Commission in this appeal must therefore conclude that the Taxpayer's opinion evidence and the price paid in an arm's-length transaction do constitute clear and convincing evidence of value.

The record in this appeal establishes that someone from the Assessor's Office attempted to inspect the subject property on May 14, 2004, but that the request was denied. (E9:5). The Assessor was required to complete her revisions to the assessment rolls on or before March 19. Neb. Rev. Stat. §77-1301(2) (Cum. Supp. 2004). There is no evidence establishing when the last inspection of the subject property occurred. The Taxpayer filed his protest on June 23, 2004 (1:2). The Assessor's Office, from

the record before the Commission, made no attempt to inspect the subject property after the protest was filed, or after the Taxpayer filed his appeal to the Commission.

The only evidence of any methodology used by the Assessor to set the value is a value of \$216,155 in 1999. (E9:5; E9:6). Nothing in the record explains the methodology used by the Assessor or by the Board to fix the 2004 assessed value of \$255,264. "Where a county assessor has not acted on his own information, and where it is arbitrarily determined without explanation of the methods used or the elements considered, there is no presumption that the valuation is correct, and such a valuation is not supported by competent evidence and is legally erroneous." *Leech, Inc. v. Chase Cty. Bd. Of Equal.*, 176 Neb. 841, 846, 127 N.W.2d 917, 921 (1964).

The Commission must base its decision on the record before it. Neb. Rev. Stat. §77-5016(3) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9). The only evidence in the record concerning the actual or fair market value is the Taxpayer's opinion evidence and the purchase price paid. The Board's decision, in light of this evidence, must be vacated and reversed.

The Taxpayer, however, requests that the assessed value be fixed at 96% of \$238,000, the purchase price, based on the median level of assessment to sales ratios. "Equalization is the

process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that no one part is compelled to pay a disproportionate share of the tax." *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999). The 2004 Order of the Commission adjusting values in Beaver Lake, Cass County, was made without reference to or knowledge of the subject property's actual or fair market value. The actual or fair market value of many properties were used to develop the statistic cited by the Taxpayer. It is the burden of the Taxpayer to show that the values resulting from the Commission's Order are not uniform and proportionate with regard to a specific property, and the Taxpayer must demonstrate by clear and convincing evidence that any "discrepancy was not the result of an error of judgment but was a deliberate and intentional discrimination systematically applied." *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984). The Taxpayer has failed to adduce clear and convincing evidence in this regard. His equalization claim must accordingly be denied.

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 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. The Taxpayer has adduced clear and convincing evidence that the Board's decision was incorrect and both unreasonable and arbitrary. The Board's decision must accordingly be vacated and reversed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Cass County Board of Equalization's Order setting the subject property's 2004 assessed value vacated and reversed.
2. The Taxpayer's real property legally described as Lot 1867A, Beaver Lake, Cass County, Nebraska, more commonly known as 9306 Milford Road, shall be valued as follows for tax year 2004:

Land	\$ 86,869
Improvements	\$151,131
Total	\$238,000

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 Cass County Treasurer, and the Cass 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 Hans made and entered the above and foregoing Findings and Orders in this appeal on the 29th day of March, 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 30th day of March, 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.

PLEASE NOTE: You will only be notified of a change in assessed value for your property for tax year 2005 if the 2005 assessed value differs from the 2004 assessed value as determined by your Assessor or County Board of Equalization. The Commission's decision has no impact on that determination. You should contact your Assessor's Office after March 19, 2005, to determine your property's assessed value for 2005. If you are unsatisfied with that value, you must file a protest on or after June 1, and before July 1, 2005. If you fail to file a protest, there can be no change to the Assessor's determination of the 2005 assessed value for your property.