

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

JENNIFER R. FREY and	)	
BRENT FREY,	)	
	)	CASE NO. 04R-10
Appellants,	)	
	)	
vs.	)	FINDINGS AND FINAL ORDER
	)	AFFIRMING DECISION OF
ANTELOPE COUNTY BOARD OF	)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,	)	
	)	
Appellee.	)	

**SUMMARY OF DECISION**

Jennifer R. Frey appeals the Antelope County Board of Equalization's determination of actual or fair market value (\$112,485). The Commission affirms the Board's decision for the reasons set forth below.

**II.  
ISSUES**

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

**III.  
STATEMENT OF THE CASE**

Jennifer R. Frey and Brent Frey purchased a .42-acre tract of land legally described as Lot 4, in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4, Township 24, Range 5, Antelope County, Nebraska, on January 24,

2003. (E14:1). The tract of land is improved with a single-family residence with 2,392 square feet of above-grade finished living area built in 1976. (E9:1).

The Assessor determined that the subject property's actual or fair market value was \$120,175 as of the January 1, 2004, assessment date. (E1). The Taxpayers timely protested that determination and alleged that the subject property's actual or fair market value was \$80,360. (E1). The Antelope County Board of Equalization ("the Board") granted the Taxpayer's protest in part and found that the subject property's actual or fair market value was \$112,485 as of the assessment date. (E1).

The Taxpayer appealed the Board's decision on August 2, 2004. The Commission served a Notice in Lieu of Summons on the Board on August 4, 2004, which the Board answered out of time but with leave of the Commission on October 19, 2004. The Commission issued an Order for Hearing and Notice of Hearing on February 2, 2005. 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 May 23, 2005. Brent Frey, one of the Taxpayers, appeared personally at the hearing. Julie A. Harrison, the Antelope County Assessor testified on behalf of the Board. Commissioners

Hans, Lore, Reynolds and Wickersham heard the appeal.  
Commissioner Wickersham served as the presiding officer.

**IV.  
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 Taxpayers paid \$115,000 for the subject property on January 24, 2003, as part of an "arm's length" transaction. (E14:1).

2. The Taxpayers invested a total of \$7,000 in materials and \$7,000 in "sweat equity" between the purchase date and the assessment date.

**V.**  
**ANALYSIS**

Non-agricultural real property is to be assessed at actual or fair market value. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004). The Taxpayer alleges that the price paid in 2003 for their Russell Lake property did not represent actual or fair market value. The Taxpayer further alleges that he overpaid for the property and that the investments made to improve the subject property since the date of purchase did not raise the actual or fair market value to more than the amount paid. The Taxpayers also allege that the subject property is located in the flood plain, and that flood insurance isn't available which in turn adversely impacts actual or fair market value. The Taxpayer's only evidence in support of their allegations is (1) opinion testimony that the subject property had an actual or fair market value of \$80,000 to \$90,000 as of the assessment date, (2) evidence of assessed value of "comparables;" and (3) evidence of the prior year's assessed value.

The market value of real property usually changes from year to year. Changes made to the property since the last assessment will usually affect market value. Occasionally, the prior

assessed value may be shown to be incorrect. The prior year's assessed value is therefore not relevant evidence of actual or fair market value in a subsequent year. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988). If the base for calculation of a percentage change is not relevant evidence then any calculation based on it cannot be relevant evidence. The percentage change in assessed value from year to year is therefore not relevant evidence that the current assessed value is incorrect and either unreasonable or arbitrary.

The subject property's actual or fair market value may be established using assessed values of "comparable" properties. *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998). This methodology, however, requires a taxpayer to demonstrate by clear and convincing evidence that the properties offered as "comparables" are truly comparable and that the assessed values of the properties represent actual or fair market value. *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998); *Westgate Recreation Ass'n v. Papio-Missouri River Natural Resources Dist.*, 250 Neb. 10, 17, 547 N.W.2d 484, 492 (1996). Mere assertions that the assessed value of the subject property is wrong and that the assessed values of

"comparable" properties are right does not satisfy the burden imposed on the complaining taxpayer.

**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 clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Board's decision must accordingly be affirmed.

**VII.  
ORDER**

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

1. The Antelope County Board of Equalization's Order setting the subject property's 2004 assessed value is affirmed.
2. The Taxpayer's real property legally described as Lot 4, SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 4, Township 24, Range 5, Antelope County, Nebraska, shall be valued as follows for tax year 2004, as determined by the Board:

Land	\$ 5,360
Improvements	\$107,125
Total	\$112,485

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 Antelope County Treasurer, and the Antelope 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 23rd day of May, 2005. The same were approved and confirmed by Commissioners Hans, 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 24<sup>th</sup> day of May, 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.**

**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.