

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

G. MICHAEL WISEMAN,)	
)	
Appellant,)	CASE NO. 04R-15
)	
vs.)	
)	
DODGE COUNTY BOARD OF)	FINDINGS AND FINAL ORDER
EQUALIZATION,)	AFFIRMING DECISION OF THE
)	COUNTY BOARD OF EQUALIZATION
)	
Appellee.)	

SUMMARY OF DECISION

G. Michael Wiseman ("the Taxpayer") owns certain single-family residential real property in Dodge County, Nebraska. The Taxpayer protested the Dodge County Assessor's ("the Assessor's") proposed 2004 value to the Dodge County Board of Equalization ("the Board"). The Board denied the Taxpayer's protest, and the Taxpayer appeals.

**I.
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 actual or fair market value and/or equalized value was unreasonable.

II.
STATEMENT OF THE CASE

The Taxpayer owns a 61,099.5 square foot tract of land legally described as Tax Lot 51, a .20 acre tract of land in Section 14, Township 17, Range 8, and Tax Lot 55, a 1.21-acre tract of land in Section 15, Township 17, Range 8, more commonly known as 1401 North Nye, in the City of Fremont, Dodge County, Nebraska. (E4:2). The tract of land is improved with a single-family residence with 3,936 square feet of above-grade finished living area built in 1925 ("the subject property"). (E4:2).

The Assessor determined that the subject property's actual or fair market value was \$396,010 as of the January 1, 2004, assessment date. (E1:2). The Taxpayer timely protested that determination and alleged that the subject property's actual or fair market value was \$311,650. (E2:2; E1:4). The Board denied the protest. (E1:1).

The Taxpayer appealed the Board's decision on August 5, 2004. The Commission served a Notice in Lieu of Summons on the Board which the Board answered. The Commission issued an Order for Hearing and Notice of Hearing and served a copy of each document on each of the Parties. The Commission, pursuant to the Amended Notice of Hearing, called the case for a hearing on the merits of the appeal in the City of Lincoln, Lancaster County, Nebraska, on October 4, 2005. The Taxpayer, an attorney, appeared personally at the hearing. The Board appeared through

Stacey Hultquist, Esq., Deputy Dodge County Attorney.

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

The Commission afforded each of the Parties the opportunity to present evidence; to cross-examine the opposing Party's witnesses who testified; and to present argument. The Board rested without adducing any testimonial evidence.

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 either 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 subject property's actual or fair market value, pursuant to the Parties' stipulation, was \$396,010 as of the January 1, 2004, assessment date.
2. The Taxpayer's "comparables" may not be truly comparable to the subject property, and the Taxpayer adduced no evidence of any adjustments necessary to account for possible differences between the subject property and the "comparable" properties.

**V.
ANALYSIS**

The Taxpayer alleged in his protest that the Assessor's proposed value exceeded actual or fair market value and that the proposed value was not equalized with comparable property.

(E1:1; E1:4). The Parties stipulated and agreed at the hearing before the Commission, however, that the subject property's actual or fair market value was \$396,010. The only issue before the Commission in light of this stipulation is equalization.

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 is to insure that, using the same relative standard, no one taxpayer

is compelled to pay a disproportionate share of the tax. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. The taxpayer, however, bears the burden to show by clear and convincing evidence that the valuation placed upon the taxpayer's property when compared with valuation placed on other similar property is grossly excessive. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb. App. 582, 597, 597 N.W.2d 623, 635 (1999). This result, however, only applies where "the 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 subject property is located in "Neighborhood Code" 4950. (E4:1). The Parties stipulated that the subject property's actual or fair market value was \$396,010 as of the assessment date. The evidence establishes that the subject property's assessed value was \$396,010 as of the January 1, 2004, assessment date. (E1:1). The subject property's level of assessment is therefore 100%.

The Taxpayer adduced as "comparable" properties Property Record Files for 19 single-family residential properties also located in "Neighborhood Code" 4950. (E5 - E23). Only four of these properties were sold during the July 1, 2001 through June

30, 2003, time frame which was used to evaluate Dodge County's level of assessment for tax year 2004. (*2004 Reports and Opinion of the Property Tax Administrator for Dodge County*, p. 20). The property in described in Exhibit 5 sold for \$368,135 on June 25, 2002, and as of the January 1, 2004, assessment date had an assessed value of \$364,670. (E5:1). The level of assessment for this property as of the assessment date was 99.06%. The property described in Exhibit 14 sold for \$400,000 on December 11, 2003, and as of the assessment date had an assessed value of \$404,490. (E14:1). The level of assessment for this property as of the assessment date was 101.12%. The property described in Exhibit 17 sold for \$210,000 on January 24, 2004, and sold again on January 30, 2004, for \$500,000. (E17:1). Nothing in the record explains why this property sold for more than twice the price paid for that same property six days earlier. The level of assessment for this property, in the absence of such an explanation, cannot be determined. The level of assessment for these properties in Neighborhood Code 4950 does not establish that the subject property's assessed value was not equalized with comparable properties.

The Taxpayer also summarized the assessment date for all of these "comparable" properties in a spreadsheet. (E3).

"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, or for purposes of demonstrating equalization or lack thereof, the similarities and differences between the subject property and the comparables must be recognized. *Id.* at 103. "Financing terms, market conditions, location, and physical characteristics are items that must be considered when making adjustments" *Id.* at 98. Most adjustments are for physical characteristics. *Id.* at 105. The Taxpayer failed to adduce any evidence of the adjustments necessary to account for any of the differences between the subject property and the comparable properties.

The Taxpayer also adduced evidence of prices paid for other single-family residential properties. (E25; E26; E27:3 - 7; E32; E33; E34). The Taxpayer failed to provide the Property Record Files for these properties, and therefore the level of assessment for these properties cannot be determined.

The Taxpayer's evidence fails to establish a lack of equalization. The Board's decision must accordingly be affirmed.

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, or that the Board's determination of value was unreasonable. The Board's decision must accordingly be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Dodge County Board of Equalization's Order setting the subject property's 2004 assessed value is affirmed.
2. The Taxpayer's real property at 1401 North Nye Avenue, in the City of Fremont, Dodge County, Nebraska, shall be valued as follows for tax year 2004 as determined by the Board:

Land	\$ 71,050
Improvements	\$324,960
Total	\$396,010
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 Dodge County Treasurer, and the Dodge County Assessing Official, 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 4th day of October, 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 4th day of October, 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.