

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

STEPHEN C. BARNES and TRACI A.))	
BARNES,))	
)	CASE NO. 03R-118
Appellants,))	
)	
vs.))	FINDINGS AND
)	FINAL ORDER
DOUGLAS COUNTY BOARD OF))	
EQUALIZATION,))	
)	
Appellee.)	

Appearances:

For the Appellant: Stephen C. Barnes
1329 South 196th Street
Omaha, NE 68130

For the Appellee: Erik C. Booth, Esq.
Deputy Douglas County Attorney
909 Civic Center
Omaha, NE 68183

Before: Commissioners Hans, Lore, Reynolds, and Wickersham.

**I.
STATEMENT OF THE CASE**

Stephen C. Barnes and Traci A. Barnes ("the Taxpayers") owns a tract of land legally described as Lot 56, Centennial Addition, City of Omaha, Douglas County, Nebraska. (E3:3). The tract of land is improved with a two-story, single-family residence, with 2,234 square feet of above-grade finished living area. Construction was completed in and the Taxpayers moved in on November 15, 2002. (E3:2).

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

was \$210,600 as of the January 1, 2003, assessment date. (E1). The Taxpayers timely filed a protest of that determination and alleged that the actual or fair market value of the property was \$180,000. (E10:1). The Douglas County Board of Equalization ("the Board") granted the protest in part and found that the actual or fair market value of the property was \$210,600 as of the assessment date. (E1).

The Taxpayers filed an appeal of the Board's decision on August 21, 2004. The Commission served a Notice in Lieu of Summons on the Board on September 10, 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 December 12, 2003. 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 5, 2004. The Taxpayers appeared personally at the hearing. The Board appeared through Erik C. Booth, Deputy Douglas County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Wickersham served as the presiding officer.

II.
ISSUES

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

III.
APPLICABLE LAW

The Taxpayers are 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)). 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 Taxpayers, 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 adduced no documentary evidence of actual or fair market value of either the subject property or of any "comparable" properties.
2. All real property subject to taxation must be assessed as of January 1 of each year. Neb. Rev. Stat. §77-1301(1) Reissue 2003).
3. The Taxpayer testified that in his opinion the actual or fair market value of the subject property was \$182,630 as of the assessment date. The basis of this reduced opinion of value is attributable to events occurring after January 1, 2003.

**V.
ANALYSIS**

The only issue presented is the actual or fair market value of the Taxpayers' real property as of the January 1, 2003, assessment date. The Taxpayers' only evidence of actual or fair market value is opinion testimony that the actual or fair market value was \$182,630 as of the assessment date. An owner who is familiar with his property and knows its worth is permitted to testify as to its value. *U. S. Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999). Evidence

establishing a difference of opinion, however, is insufficient to overcome the statutory presumption in favor of the Board. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 524 (2001). Furthermore, taxpayers who offer no evidence that the subject property is valued in excess of its actual value and who only produce evidence complaining of the assessor's methodology fail to meet their burden of proof. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

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).
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 taxpayers. *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. An owner who is familiar with his property and knows its worth is permitted to testify as to its value. *U. S. Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).
6. The burden of persuasion imposed on the complaining taxpayers, in an appeal from a county board of equalization, is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed on the property when compared with 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 Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 524 (2001).

7. Taxpayers who offer no evidence that the subject property is valued in excess of its actual value and who only produces evidence that is aimed at discrediting valuation methods utilized by county assessor fails to meet their burden of proving that value of the property was not fairly and proportionately equalized or that valuation placed upon the property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).
8. Based upon the applicable law, the Board need not put on any evidence to support its valuation of the property at issue unless the taxpayers establish 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).
9. The Taxpayers have failed to adduce any evidence establishing that the Board's decision was incorrect or unreasonable or arbitrary. The Taxpayers have therefore

failed to satisfy their burden of proof. The Board's Motion to Dismiss must accordingly be granted.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Board's Motion to Dismiss is granted.
2. The Douglas County Board of Equalization's Order setting the assessed value of the subject property for tax year 2003 is therefore final.
3. The Taxpayers' real property legally described as Lot 56, Centennial Subdivision, more commonly known as 1329 South 196th Street, City of Omaha, Douglas County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$ 35,000
Improvements	\$175,600
Total	\$210,600
4. Any request for relief by any Party not specifically granted by this order is denied.
5. This decision, if no appeal is filed, shall be certified to the Douglas County Treasurer, and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003).

6. This decision shall only be applicable to tax year 2003.
7. 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 5th day of March, 2004. The same were approved and confirmed by Commissioners Lore, Reynolds and Wickersham are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5)(Reissue 2003).

Signed and sealed this 5th day of March, 2004.

SEAL

Wm. R. Wickersham, Chair