

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

K ENTERPRISES, L.L.C., A	)		
Nebraska Limited Liability	)		
Company, and MICHAEL S.	)	CASE NO.	04R-115
KRENISKY, TRUSTEE,	)		04R-116
	)		
Appellants,	)	FINDINGS AND FINAL ORDER	
	)	AFFIRMING COUNTY BOARD'S	
vs.	)	DECISIONS	
	)		
DOUGLAS COUNTY BOARD OF	)		
EQUALIZATION,	)		
	)		
Appellee.	)		

Appearances:

For the Appellant: Michael S. Krenisky  
4835 Lockwood Lane  
Omaha, NE 68152

For the Appellee: Christine A. Lustgarten, Esq.  
Chief Deputy, Civil Division  
Douglas County Attorneys Office  
909 Civic Center  
Omaha, NE 68183

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

**I.  
STATEMENT OF THE CASE**

**A.  
CASE NUMBER 04R-115**

K Enterprises, L.L.C., holds legal title to an 8,712 square foot tract of land legally described as the S½ of Lot 2, Block 13, Bensonvale Acres, City of Omaha, Douglas County, Nebraska. (E24:6). The tract of land is improved with a single-family residence with 962-square feet of finished above-grade living area built in 1960. (E24:5). Michael S. Krenisky and JoAnn

Krenisky purchased the property in 1990 for \$34,000. (E24:6). The owners made minimal improvements in the property between 1990 and January 1, 2004. Michael S. Krenisky formed a Nebraska Limited Liability Company known as K Enterprises, L.L.C. ("the L.L.C.") in late 2003. The owners transferred legal title to the property to the L.L.C. on April 16, 2004. (E24:6).

The Douglas County Assessor ("the Assessor") determined that the subject property's actual or fair market value was \$77,200 as of the January 1, 2004, assessment date. (E1). Michael S. Krenisky ("the Taxpayer"), one of the managing members of the L.L.C., timely protested the Assessor's determination and alleged that the subject property's assessed value was not equalized with comparable property. (E37:1). The Taxpayer requested an "equalized" value of \$59,000, a request which the Douglas County Board of Equalization ("the Board") granted in part. (E37:1; E1). The Board determined that the subject property's equalized value was \$66,000.

**B.**  
**CASE NUMBER 04R-116**

JoAnn Krenisky and Michael S. Krenisky, CO-Trustees of the JoAnn Krenisky Revocable Trust, holds legal title to a tract of land legally described as Lot 4, Yorkshire Hills Third Addition, City of Omaha, Douglas County, Nebraska. (E9:1). Mrs. Krenisky and her husband Michael S. Krenisky, a former real estate broker

and an engineer, purchased the tract of land on July 30, 1992, for \$15,000. (E39:2). Mr. Krenisky, serving as his own general contractor, started construction of a raised-ranch, single-family residence on the property in 1996 or 1997. Construction was not completed until 2002. The Assessor's records indicate the house has 2,395 square feet of above-grade finished living area, and a three-car basement garage. The rest of the basement is unfinished. (E39:1). The Kreniskys transferred legal title to the property to the JoAnn Krenisky revocable trust on June 10, 2004. (E39:2).

The Assessor determined that the subject property's actual or fair market value was \$220,000 as of the January 1, 2004, assessment date. (E2). Michael S. Krenisky, one of the Trustees ("the Taxpayer"), timely protested that determination and alleged that the subject property's assessed value was not equalized with comparable property. (E43:1). The Taxpayer requested an "equalized" value of \$172,800, a request which the Douglas County Board of Equalization ("the Board") denied. (E43:1; E2).

### **C. PROCEDURAL HISTORY**

The Taxpayer appealed each of the Board's decisions on August 23, 2004. The Commission served a Notice in Lieu of Summons on the Board in each appeal on September 3, 2004, which the Board answered on September 15, 2004. The Commission

consolidated the appeals for purpose of hearing, and issued an Order for Hearing and Notice of Hearing to each of the Parties on November 22, 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 January 27, 2005. Michael S. Krenisky, a Managing Member of the LLC in Case Number 04R-115 and one of the Trustees of the JoAnn Krenisky Revocable Trust in Case Number 04R-116, appeared personally at the hearing. The Board appeared through Christine A. Lustgarten, Esq., Chief Deputy, Civil Division, Douglas County Attorneys Office. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer.

The Taxpayer testified and then rested. The Board moved to dismiss the appeal and in the alternative rested without calling any witnesses. For purposes of ruling on motions the Commission denied Motion to Dismiss and afforded the Parties the opportunity to make closing argument.

## **II. ISSUES**

The issues before the Commission are (1) whether the Board's decision to deny one of the Taxpayer's equalization protests and

grant the other only in part were incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determinations of equalized value were unreasonable.

### **III. APPLICABLE LAW**

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the Board's decisions were incorrect and (2) that the Board's decisions were unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004). 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 values were 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 had no independent opinion of actual or fair market value for either property.

2. The Taxpayer adduced no evidence of the adjustments necessary to account for the differences, if any, between the properties offered as "comparables" and the subject property.
3. The Taxpayer adduced no evidence of the ratio of actual or fair market of the subject property compared and no evidence of the ratio of actual or fair market value of the comparable properties to the assessed values of those properties.

**V.  
ANALYSIS**

The Taxpayer alleges that the assessed values of the subject properties were not equalized with "comparable" properties. 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). If the taxpayers' property is assessed in excess of the value at which others are taxed, then the taxpayers have a right to relief. However, the burden is on the taxpayers to show by clear and convincing evidence that the

valuation placed upon their 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).

Analysis of an equalization claim therefore requires (1) evidence of the actual or fair market value of the subject property; (2) evidence of the assessed value of the subject property; (3) evidence of the actual or fair market value of the comparables properties; and (4) evidence of the level of assessment of the comparable properties. The subject property's assessment ratio is then compared to the comparable properties assessment ratios in order to establish any differential between those ratios.

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). The Taxpayer, however, adduced no clear and convincing evidence of actual or fair market value. The equalization analysis therefore cannot be performed.

The Taxpayer alleges that assessed values of comparable properties support his equalization appeal. "Comparable" properties share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation*, 2<sup>nd</sup> Ed., International

Association of Assessing Officers, 1996, p. 98. Further, when using "comparable" properties to establish value, the properties must be truly comparable. *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998). If there are differences between the subject property and the "comparable" properties, then the differences must be accounted for. "The adjustment process is an analysis designed to show what the comparable property would have sold for if these differences were eliminated. The sale price of the comparable property is adjusted to account for as many of its differences from the subject property as possible. In adjusting the sale price of the comparable, lump sum dollar amounts or percentages are customarily employed. Adjustments are always applied to the sale price of the comparable property, not to the subject property. If the sold property is inferior in some respect to the subject property, the sale price is increased by a dollar amount or percentage. If the sold property is superior in some respect, the sale price is decreased. Applying the adjustments to the sale price of the comparable property provides a value indication for the subject property." *Property Assessment Valuation*, 2<sup>nd</sup> Ed., IAAO, 1996, p. 76. "Financing terms, market conditions, location, and physical characteristics are items that must be considered when making adjustments . . ." *Property Assessment Valuation*, 2<sup>nd</sup> Ed., 1996, p. 98.



The Taxpayer's "comparable" properties vary in terms of age, style, size, quality of construction, condition, and amenities. The Taxpayer adduced no evidence of the adjustments necessary to render the "comparables" truly comparable to the subject property using physical characteristics.

Finally, the Taxpayer denied the Assessor's request to inspect the interior of the subject properties. The Taxpayer has been previously notified of the consequences of denying permission to conduct an interior inspection. (E4).

The Taxpayer successfully adduced evidence establishing errors in the Assessor's records. A taxpayer who offers no clear and convincing evidence that the subject property is valued in excess of its actual value and who only produces evidence that is aimed at discrediting the valuation methods utilized by the county assessor fails to meet his or her burden of proving that the 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).

The Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes 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). The Taxpayer has failed to adduce clear and convincing evidence on any of the essential elements of an equalization appeal. The Board's decisions must accordingly be affirmed.

**VI.  
CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the Parties and over the subject matter of these appeals.
2. The Commission is required to affirm the Board's decisions unless evidence is adduced establishing that the Board's actions were incorrect and either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004).
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 decisions. These presumptions remain until the Taxpayer presents competent evidence to the contrary. If the presumption is extinguished the reasonableness of the Board's values becomes one of fact based upon all the evidence presented. The burden of showing such valuations 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 decisions were incorrect and either unreasonable or arbitrary.
6. The Board's decisions must accordingly be affirmed.

**VII.  
ORDER**

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

1. The Douglas County Board of Equalization's Orders setting the assessed values of the subject properties for tax year 2004 are affirmed.
2. The Taxpayer's real property in Case Number 04R-115 legally described as the S½ Lot 2, Block 13, Bensonvale Acres Addition, City of Omaha, Douglas County, Nebraska, more commonly known as 4538 North 62<sup>nd</sup> Street, shall be valued as follows for tax year 2004 as determined by the Board:

Land	\$ 7,600
Improvements	\$58,400
Total	\$66,000

3. The Taxpayer's real property in Case Number 04R-116, legally described as Irreg Lot 4, Yorkshire Hills 3<sup>rd</sup> Addition, City of Omaha, Douglas County, Nebraska, more commonly known as 4835 Lockwood Lane, shall be valued as follows for tax year 2004 as determined by the Board:

Land	\$ 12,800
Improvements	\$207,200
Total	\$220,000

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) (Cum. Supp. 2004).
6. This decision shall only be applicable to tax year 2004.
7. 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 27<sup>th</sup> day of**

January, 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).

Signed and sealed this 28<sup>th</sup> day of January, 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). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.