

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

CHANDER P. DEV and NEELAM DEV, )	)	
	)	
Appellants, )	)	CASE NO. 03R-87
	)	
vs. )	)	
	)	FINDINGS AND
DOUGLAS COUNTY BOARD OF )	)	FINAL ORDER
EQUALIZATION, )	)	
	)	
Appellee. )	)	

Appearances:

For the Appellant: Chander P. Dev  
Neelam Dev  
4803 North 135<sup>th</sup> Street  
Omaha, NE 68164

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**

Chander P. Dev and Neelam Dev ("the Taxpayers") own a tract of land improved with a single-family residence. The property is legally described as Lot 662, Hillsborough Addition, City of Omaha, Douglas County, Nebraska. (E9:2). The Taxpayers purchased this property for \$215,320 on July 19, 1999. (E9:3). The house has 2,651 square feet of above-grade finished living area, a walk-out basement, and a 527 square foot garage. (E9:1).

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

was \$210,500 as of the January 1, 2003, assessment date. (E1). The Taxpayers timely filed a protest of that determination and alleged that equalized value of the subject property was \$194,600. (E13:1). The Douglas County Board of Equalization ("the Board") granted the protest in part and found that the equalized value of the subject property was \$204,600 as of the assessment date. (E1).

The Taxpayers filed an appeal of the Board's decision on August 19, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 8, 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 4, 2004.

The Taxpayers appeared personally at the hearing. The Board appeared through Erik C. Booth, the Deputy Douglas County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Wickersham served as the presiding officer. The Commission received all the exhibits, and

heard evidence and argument. The Board moved to dismiss the Taxpayers' appeal at the close of the Taxpayers' case-in-chief.

## **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 level of assessment for the subject property, based on the 2003 assessed value and the unadjusted 1999 sale price, is 95%.
2. The level of assessment of the Taxpayers' comparable properties cannot be determined. The assessed value of the subject property for tax year 2003 is identical to the tax year 2000 assessed value. All but one of the Taxpayer's comparables have the same assessed value for tax year 2003 as they did for tax year 2000. The one exception had a higher assessed value for tax year 2003 than tax year 2000.
3. The assessed value of the subject property, using the Taxpayers' own comparables, is the second highest on a per square foot basis. (E14).

**V.  
ANALYSIS**

The Taxpayers offered five "comparable" properties in support of his allegation that the assessed value of the subject property was not equalized with "comparable" properties. (E2; E4; E5 - E7). The Commission's Order for Hearing compels a party utilizing comparable properties as evidence to provide complete and legible copies of the County's Property Record File for the

tax year at issue for those comparable properties. All information used to set the assessed value of the comparable properties for the tax year at issue shall be included. (*Order for Hearing*, ¶2, p. 3). The Taxpayers failed to provide the required documentation for the properties offered as "comparables." The Board, however, provided those documents for the four properties located in the Hillsborough Subdivision as part of its Rebuttal Evidence. (E15 - E18).

"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. When using "comparable" properties to establish valuation or a lack of equalization, the "comparable" 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 inventory of physical characteristics of the subject property and the Taxpayers' comparables are summarized below.

	Yr Blt	Qual	Cond	Size	Room	Bedroom	Bath	Gar	Value	Ex
Subj	1999	Good	Good	2,651	10	4	3.5	527	\$ 204,600	9:1
Comp 1	1999	Good	Good	1,865	6	3	2.5	440	\$ 172,500	15:1
Adj.	--	--	--	?	?	?	?	?	?	
Comp 2	1999	Good	Good	2,303	8	4	3.5	527	\$ 177,200	16:1
Adj.	--	--	--	?	?	--	--	--	?	
Comp 3	2000	Good	Good	2,556	8	4	2.5	486	\$ 179,400	18:1
Adj.	?	--	--	?	?	--	?	?	?	
Comp 4	1998	Good	Good	2,754	?	4	3.5	770	\$ 197,700	6:2
Adj.	?	--	--	?	?	--	--	?	?	
Comp 5	1998	Good	Good	2,583	8	4	2.5	747	\$ 188,200	17:1
Adj.	?	--	--	?	?	--	?	?	?	

In addition to the features listed above, the Taxpayers' property is the only property with a walk-out basement.

The Taxpayers adduced no evidence of the adjustments necessary to render the "comparables" truly comparable to the subject property using physical characteristics. Location is also critical component in the valuation of real property. The subject property is located in the Hillsborough Subdivision. The Taxpayers' fourth "comparable" (E6) is located in the Standing Bear Pointe Subdivision. The Taxpayers adduced no evidence of the adjustment necessary to account for the difference in location.

Assuming without deciding that the Taxpayers' comparable properties are truly comparable to the subject property, the unadjusted assessed value of those properties, when divided by the above-grade finished square feet for that property, shows the following:

Comp 1	\$92.49
Subject	\$77.18
Comp 2	\$76.94
Comp 5	\$72.86
Comp 4	\$71.79
Comp 3	\$70.19

The subject property does not have the highest per square assessed value of the comparable properties.

Finally, the level of assessment of the subject property, based on the unadjusted purchase price paid in 1999, is 95%. The Taxpayers failed to adduce any evidence of actual or fair market value for their comparable properties. The level of assessment based on assessed value compared to actual or fair market value cannot be determined.

The Taxpayers in an equalization appeal are required to adduce clear and convincing evidence that the assessed value of their property is grossly excessive when compared with assessed values of other comparable properties. *Cabela's, Inc., v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999). The Taxpayers, by failing to demonstrate that their assessed value is grossly excessive, has failed to satisfy their burden of proof.

## 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 Taxpayers present 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. 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).

6. 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).
7. 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).
8. The Taxpayer has failed to adduce any clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary. 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 for failure to prove a prima facie case 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 662, Hillsborough Subdivision, more commonly known as 4803 North 135<sup>th</sup> Street, City of Omaha, Douglas County, Nebraska shall be valued as follows for tax year 2003:

Land	\$ 14,600
Improvements	\$190,000
Total	\$204,600
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 4<sup>th</sup> day of March, 2004. The same were approved and confirmed by Commissioners Lore, Reynolds and Wickersham, and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Reissue 2003).

Signed and sealed this 4<sup>th</sup> day of March, 2004.

**SEAL**

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*Wm. R. Wickersham, Chair*