

BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION

JAMES C. SANDERSON,)	
)	
Appellant,)	CASE NO. 00R-123
)	
vs.)	DOCKET ENTRY
)	REVERSING THE DECISION
ADAMS COUNTY BOARD OF)	OF THE COUNTY
EQUALIZATION,)	
)	
Appellee.)	

The Nebraska Tax Equalization and Review Commission ("Commission") called the above-captioned case for a hearing on the merits of the appeal in the City of Hastings, Adams County, Nebraska, on the 18th day of September, 2001, pursuant to a Notice of Hearing issued the 20th day of July, 2001.

James C. Sanderson ("the Taxpayer") appeared personally at the hearing. The Adams County Board of Equalization appeared through Donna Fegler Daiss, the Adams County Attorney. During the hearing, the Commission took statutory notice of certain information, and each of the parties was afforded the opportunity to present evidence and argument. Each party was also afforded the opportunity to cross-examine witnesses of the opposing party as required by law.

Neb. Rev. Stat. §77-5018 (2000 Cum. Supp., as amended by 2001 Neb. Laws, L.B. 465, §8), requires that every final decision and order entered by the Commission which is adverse to a party

be stated in writing or on the record and be accompanied by findings of fact and conclusions of law. The Commission received, heard and considered the exhibits, evidence and argument. Thereafter it entered its Findings of Fact, Conclusions of Law, and a Final Order on the merits of the appeal on the record. Those matters, in substance, are set forth below:

I.
FINDINGS OF FACT

From the record, the Commission finds and determines as follows:

A.
PROCEDURAL FINDINGS

1. That the Taxpayer is the owner of record of certain residential real property located near the City of Hastings, Adams County, Nebraska ("the subject property").
2. That the Adams County Assessor ("the Assessor") proposed valuing the subject property in the amount of \$197,000 for purposes of taxation as of January 1, 2000 ("the assessment date"). (E1).
3. That Taxpayer timely filed a protest of the proposed valuation and requested that the subject property be valued in the amount of \$168,000. (E1).

4. That the protest alleged that the subject property was overvalued and that the assessed value was not equalized with like properties. (E1).
5. That the County denied the protest. (E1).
6. That thereafter, the Taxpayer timely filed an appeal of the County's decision to the Commission. (Appeal Form).
7. That the question of the value of the land component of the subject property (\$13,185) was not presented to the County, and is not at issue before the Commission.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. That the land is improved with a house which was built in 1992. The house is a one-and-one-half story home with 1,644 square feet of above-grade finished living area. (E13:6).
That there are 10 plumbing fixtures, a two-car attached garage, and a deck. (E13:2; E13:6).
2. That the Taxpayer testified that in his opinion the actual or fair market value of the subject property as of the assessment date was \$166,665.

3. That the Taxpayer acquired the subject property in October of 1999, for \$197,000. That the Taxpayer testified that the purchase price included certain personal property; that the property was acquired for "a premium;" and that the property was acquired at the "top of the market."
4. That the Taxpayer testified that the value of the personal property included in the purchase price was approximately \$4,110. That the Taxpayer testified this amount represents the purchase price new of the bookcases. That no evidence was adduced to the establish the actual or fair market value of the bookcases in their "used" condition.
5. That the Taxpayer adduced excerpts from the Property Record Files for two other properties which the Taxpayer offered as "comparables."
6. That "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.
7. That the Taxpayer's first "comparable" is a one-and-a-half story home located at Lot 4, Block 3, Lochland Country Club

- Subdivision Number 7. (E8). That the assessed value of this property for tax year 2000 was \$175,140.
8. That this property has 1,946 square feet of above grade finished living area. (E8:2). That the per square foot assessed value of this property is \$75.17 per square foot (improvements only).
 9. That the Taxpayer also offered as a comparable a property located at Lot 3, Block 3, Lochland Country Club Subdivision No. 7. That this property has an assessed value of \$170,000 as of the assessment date. (E9:1). That this property has 1,774 square feet of above grade finished living area. That the per square foot assessed value of this property (improvements only) is \$87.78. That construction appears to have been completed in 1995. (E9:1).
 10. That the per square foot assessed value of the subject property (improvements only) is \$111.81.
 11. That the County determined that the subject property was of "Very Good" Quality of Construction (E13:2) and of "Good" Condition. (E13:6).
 12. That all of the "comparables" are, from the testimony offered by the Taxpayer, in the same neighborhood, and were built by the same builder.

13. That from the record before the Commission, those properties offered by the Taxpayer are truly comparable to the subject property.
14. That the record therefore establishes that the improvements to the subject property are the oldest, and that the above-grade finished living area for the subject property is the smallest of the comparables.
15. That the subject property has the highest assessed value of the three properties.
16. That the County Assessor did not personally inspect the subject property.
17. That the County offered no exhibits to support its opinion of value.
18. That the County was unable to offer any testimony to establish that any professionally accepted mass appraisal methodology was used to establish the value of the subject property for tax year 2000. Further that the County Assessor testified that the supporting documentation which would have established the basis for the opinion of value was no longer in the Property Record File and further was not available.
19. That while the purchase price of the subject property may represent actual or fair market value, the assessed value of

the subject property is not equalized with the values of the "comparable" properties.

20. That from the entire record before it, the Commission finds and determines that the equalized value of the subject property is that amount testified to by the Taxpayer, i.e., \$168,000.

21. That based upon this assessed value, the assessed value of the properties both (land and buildings) are as follows:

Exhibit 8	\$175,140
Exhibit 9	\$170,000
Subject Property	\$168,000

22. Further that using the equalized value of \$168,000, the per square foot assessed values (improvements only) are as follows:

Exhibit 8	\$75.17
Exhibit 9	\$87.78
Subject Property	\$94.17

23. That the Taxpayer has adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the County.

24. That the assessed value of the subject property for tax year 2000 as determined by the County is not supported by the evidence.
25. That therefore the decision of the County was both unreasonable and arbitrary, and must be vacated and reversed.

II.
CONCLUSIONS OF LAW

1. That the Commission has jurisdiction over the parties and the subject matter of this appeal.
2. That the Commission is required to affirm the decision of the County unless evidence is adduced establishing that the action of the County was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (2000 Cum. Supp., as amended by 2001 Neb. Laws L.B. 419 §1, 2001 Neb. Laws L.B. 170 §22 and 2001 Neb. Laws L.B. 465 §7). The Nebraska Supreme Court, in considering similar language, has held that "There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. That presumption remains until there is competent

evidence to the contrary presented, and the presumption disappears when there is competent evidence on appeal to the contrary. From that point on, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board." *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).

3. That "It is the function of the county board of equalization to determine the actual value of locally assessed property for tax purposes. In carrying out this function, the county board must give effect to the constitutional requirement that taxes be levied uniformly and proportionately upon all taxable property in the county. Individual discrepancies and inequalities within the county must be corrected and equalized by the county board of equalization." *AT & T Information Systems, Inc. v. State Bd. of Equalization and Assessment*, 237 Neb. 591, 595, 467 N.W.2d 55, 58 (Neb. 1991).
4. That "It is well established that the value of the opinion of an expert witness is no stronger than the facts upon

which it is based." *Bottorf v. Clay Cty. Bd. Of Equal.*, 7 Neb. App. 162, 167, 580 N.W.2d 561, 565 (1998).

5. That "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. That the appraisal of real estate is not an exact science. *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N. W. 2d 872, 874 (1977).
7. That the Nebraska Supreme Court has determined that "(w)here the county assessor does not act upon his own information, or does not make a personal inspection of the property, any presumption as to the validity of the official assessment does not obtain." *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 580, 144 N. W. 2d 161, 169 (1966).
8. That the prior years assessment is not relevant to the subsequent year's valuation. *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).

9. That "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. Where it is impossible to secure both the standards of the true value of a property for taxation and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. 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. However, the burden is on the taxpayer 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).
10. That "It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other

relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.

Forney v. Box Butte County Bd. of Equalization, 7 Neb. App. 417, 424, 582 N. W. 2D 631, 637, (1998).

11. Comparing assessed values of other properties with the subject property to determine actual value has same inherent weakness as comparing sales of other properties with the subject property. 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 (Neb. App. 1998).

III.
ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the order of the Adams County Board of Equalization setting the assessed value of the subject property for tax year 2000 is vacated and reversed.

2. That Taxpayer's residential real property legally described as Lot 6, Block 3, Lochland Country Club Sub #7, more commonly known as 4903 Madden Court, near the City of Hastings, Adams County, Nebraska, shall be valued as follows for tax year 2000:

Land	\$ 13,185
Improvements	\$154,815
Total	\$168,000

3. That this decision, if no appeal is filed, shall be certified to the Adams County Treasurer, and the Adams County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (2000 Cum. Supp., as amended by 2001 Neb. Laws L.B. 419 §1, 2001 Neb. Laws L.B. 170 §22, and 2001 Neb. Laws L.B. 465 §7).
4. That this decision shall only be applicable to tax year 2000.
5. That 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 18th day of

September, 2001. The same were approved and confirmed by Commissioner Edwards and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (2000 Cum. Supp., as amended by 2001 Neb. Laws, L.B. 465, §5).

Signed and sealed this 20th day of September, 2001.

SEAL





Mark P. Reynolds, Chairman