

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

CHRISTOPHER J. FEUERBACH,)	
)	
Appellant,)	CASE NO. 99R-33
)	
vs.)	DOCKET ENTRY
)	REVERSING THE DECISION
DOUGLAS 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 Omaha, Douglas County, Nebraska, on the 28th day of March, 2000, pursuant to a Third Amended Notice of Hearing issued the 23rd day of March, 2000.

Christopher J. Feuerbach ("Taxpayer") appeared personally at the hearing, and the Douglas County Board of Equalization appeared through Timothy J. Buckley, Deputy Douglas County Attorney. During the hearing, the Commission took judicial 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 (1998 Cum. Supp.), 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, after receiving the exhibits and hearing evidence and argument, entered its Findings of Fact, Conclusions of Law, and a Final Order on the merits of the appeal in this case, which were in substance as follows:

**I.
FINDINGS OF FACT**

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

**A.
PROCEDURAL FINDINGS**

1. That Taxpayer is the owner of record of certain residential real property located in the City of Omaha, Douglas County, Nebraska ("the subject property").
2. That the Douglas County Assessor ("the Assessor") proposed valuing the subject property in the amount of \$72,100 for purposes of taxation as of January 1, 1999 ("the assessment date"). (E1).
3. That Taxpayer timely filed a protest of the proposed valuation, and requested that the subject property be reduced to \$61,000. (E23:3).
4. That the basis of the protest was the allegation that the property was overvalued and that the assessed value of the subject property was not equalized with comparable property. (E23:3).
5. That the County granted the protest in part and determined that the equalized value of the subject property as of the assessment date was \$71,600. (E23:1).
6. That thereafter, the Taxpayer timely filed an appeal of the County's decision to the Commission. (Appeal Form).

**B.
SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS**

1. That the subject property consists of certain residential real property on a parcel legally described as Lot 113, Underwood Park 1st Addition. That the improvements consist of a

ranch style home with an above grade finished living area of approximately 950 square feet, which was built in 1955. That a 304-square foot, flat-roofed addition was added to the improvements in 1970, for a total of 1,254 square feet.

2. That the Taxpayer acquired the subject property in March, 1998.
3. That the Taxpayer did not dispute the allegation that the actual or fair market value of the subject property was \$75,000 after the Commission denied the receipt of Exhibit 7, pages 2 and 3. That although the evidence is in conflict, the Commission finds and determines from the entire record before it that the purchase price was \$75,000.
4. That the Taxpayer's only issue is the allegation that the assessed value of the subject property is not equalized with comparable property.
5. That the County's own evidence (Exhibit 26, page 1) demonstrates that there is a lack of equalization of assessments, as shown in the sales listed below (the subject property is denoted by "*"):

	Exh.	Address	Sq. Ft.	Assessed	Sale Price	%
1 *	24	1010 N 78 th St	1,254	\$71,600	\$75,000	95.46
2	9	1008 N 77 th Av	950	\$58,900	\$68,000	86.62
3	10	1018 N 78 th St	1,186	\$64,100	N/A	N/A
4	17	1017 N 78 th St	988	\$61,800	\$77,500	79.74
5	12	7739 Burt St	936	\$55,500	\$78,950	70.30
6	13	7719 Burt St	936	\$55,000	\$61,000	90.16
7	14	814 N 77 th Av	1,102	\$63,500	\$82,000	77.43
8	22	770 Cole Creek	936	\$55,000	\$78,350	70.20
9	15	829 N 78 th St	934	\$58,400	\$74,000	78.92

10	16	7744 Iazard	886	\$49,200	\$75,000	65.60
11	17	7732 Webster	1,400	\$55,700	\$75,990	73.30
12	18	1005 N 78 th St	934	\$59,000	N/A	N/A
13	19	7826 Franklin	1,176	\$78,300	\$92,500	84.64
14	20	822 N 77 th Av	988	\$58,900	N/A	N/A
15	21	1106 Cole Crk	950	\$55,000	\$68,650	80.11
16	22	770 Cole Crk	936	\$55,000	\$78,350	70.20

6. That when these sold parcels are arrayed by assessment ratio, the results are as follows:

P#	Exh.	Address	Sq. Ft.	Assessed	Sale Price	%
3	10	1018 N 78 th St	1,186	\$64,100	N/A	N/A
12	18	1005 N 78 th St	934	\$59,000	N/A	N/A
14	20	822 N 77 th Av	988	\$58,900	N/A	N/A
10	16	7744 Iazard	886	\$49,200	\$75,000	65.60
16	22	770 Cole Creek	936	\$55,000	\$78,350	70.20
8	22	770 Cole Creek	936	\$55,000	\$78,350	70.20
5	12	7739 Burt St	936	\$55,500	\$78,950	70.30
11	17	7732 Webster	1,400	\$55,700	\$75,990	73.30
7	14	814 N 77 th Av	1,102	\$63,500	\$82,000	77.43
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4	11	1017 N 78 th St	988	\$61,800	\$77,500	79.74
15	21	1106 Cole Crk	950	\$55,000	\$68,650	80.11
13	19	7826 Franklin	1,176	\$78,300	\$92,500	84.64
2	9	1008 N 77 th Av	950	\$58,900	\$68,000	86.62
6	13	7719 Burt St	936	\$55,000	\$61,000	90.16
1 *	24	1010 N 78 th St	1,254	\$71,600	\$75,000	95.46

7. That the term "median" is defined as "A measure of central tendency; the value of the middle item in an uneven number of items arranged or arrayed according to size or the arithmetic average of the two central items in an even number of items similarly arranged; a positional average that is not affected by the size of extreme values." *The Dictionary of Real Estate Appraisal, Third Edition*, Appraisal Institute, 1993, p. 226..
8. That, as shown in the chart above, the median level of assessment according to the County's own evidence is 78.92%. (E26:1).
9. That Neb. Rev. Stat. §77-5023 (1998 Cum. Supp.), provides that the "acceptable range" for the median level of assessment for the residential class of property for tax year 1999 was 92% to 100%.
10. That from the entire record before the Commission, the Taxpayer's property is the only property which is assessed at a level within the acceptable range.
11. That the uncontroverted evidence establishes that the assessed value of the Taxpayer's property was reviewed by the County Assessor's Office based solely on the fact that the property sold. That the County's appraiser testified that the "REV" code indicated a "Sale Review." (E24:1). That but for this sale, under the previous Assessor's policies, the property's assessment was reviewed only every 6-years.
12. That the uncontroverted testimony establishes that a number of the sold properties shown in the table set forth above occurred after January 1, 1999. Assuming without deciding that those assessment/sales ratios are not relevant, the remaining properties' assessments are set forth below:

P#	Exh.	Address	Sq. Ft.	Assessed	Sale Price	%
3	10	1018 N 78 th St	1,186	\$64,100	N/A	N/A
12	18	1005 N 78 th St	934	\$59,000	N/A	N/A
14	20	822 N 77 th Av	988	\$58,900	N/A	N/A
10	16	7744 Iazard	886	\$49,200	\$75,000	65.60
8	22	770 Cole Creek	936	\$55,000	\$78,350	70.20
15	21	1106 Cole Crk	950	\$55,000	\$68,650	80.11
1*	24	1010 N 78 th St	1,254	\$71,600	\$75,000	95.46

* Subject property.

13. That as shown in the chart above, the median assessment/sales ratio (excluding the subject property) is 70.20%, and again that median does not fall within the acceptable range set by statute. Neb. Rev. Stat. §77-5023 (1998 Cum. Supp.).
14. That the Property Tax Administrator, in the *1999 Reports and Opinion of the Property Tax Administrator for Douglas County* ("1999 Report"), determined that "the quality of assessment for residential real property is not acceptable because of the assessment practices in place during the study period by the former Assessor." *1999 Report*, p. 73. That the phrase "quality of assessment" refers to the uniformity and proportionality of assessments in light of the Constitution and Statutes of the State of Nebraska.
15. That the findings of the Property Tax Administrator were not challenged by Douglas County for tax year 1999.
16. That the "improper assessment practices" consisted of "chasing sales." That "chasing sales" refers to a practice of only reappraising real property that has sold, which practice violates the Uniformity Clause of Article 8 of the Nebraska Constitution.

17. That based on the improper "assessment practices" for 1999, a shorter time frame for the evaluation of the level of assessment for the entire class of residential real property for Douglas County was utilized, in accordance with *Directive 99-2, County Assessor Reference Manual, p. 4*. That therefore a 6-month period of review was utilized by the Commission in the 1999 equalization proceedings. Neb. Rev. Stat. §77-5022 (1999 Supp.).
18. That the process of reviewing assessments on a county-wide basis for equalization purposes during the statewide equalization proceedings is a process separate and apart from the Commission's consideration of individual appeals from decisions of the Douglas County Board of Equalization.
19. That the County had an affirmative obligation to "fairly and impartially equalize the values of all items of real property in the county so that all real property is assessed uniformly and proportionately." Neb. Rev. Stat. §77-1501 (1999 Supp.).
20. That the Commission, from the entire record before it, places no weight on the County Assessor's expert opinion regarding the equalization of the subject property as determined by the previous County Assessor.
21. That based on the entire record before it, the Commission finds and determines that the actual or fair market value of the subject property as of January 1, 1999, was \$75,000.
22. That however, the actual or fair market value of the subject property was not equalized with comparable residential property in the Underwood Park Additions to the City of Omaha, Douglas County, Nebraska, for tax year 1999.
23. That therefore the actual or fair market value of the subject property must be equalized with comparable properties.

24. That the equalized value of the subject property as of the assessment date should have been \$65,250 based on the Taxpayer's evidence that an equalization factor of 87% which is "the same percentage of assessed value to market value as the other properties in my immediate neighborhood" (E2:4) should have been applied to the subject property.
($\$75,000 \times .87 = \$69,250$)
25. That therefore the decision of the County was both unreasonable and arbitrary.
26. That therefore the decision of the County which granted Taxpayer's protest only in part must be vacated.

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 by Neb. Rev. Stat. §77-5016(7) (1999 Supp.) to affirm the decision of the County unless evidence is adduced establishing that the action of the County was unreasonable or arbitrary.
3. That "[t]here 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 . . . In an appeal to the [Commission from the County Board of Equalization] . . . the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to 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." *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).

4. 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).
5. That "[e]qualization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value." *Scribante v. Douglas Cty. Bd. of Equal.*, 8 Neb. App. 25, 588 N.W.2d 190 (1999).
6. That "[t]he 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.” *Future Motels, Inc. v. Custer Cty. Bd. of Equal.*, 252 Neb. 565, 563 N.W.2d 785 (1997).

7. That “[w]here ‘the discrepancy was not the result of an error of judgment but was a deliberate and intentional discrimination systematically applied’ the Taxpayer’s right to relief is clear. “The right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.’ ” *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W. 2d 620, 626 (1984).
8. That “[i]t 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).
9. That “[i]t 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).

10. That based on the entire record before the Commission, sufficient clear and convincing evidence has been adduced to establish that the action of the County in this case was both unreasonable and arbitrary.
11. That the Taxpayer has met the burden of persuasion as required by *US Ecology, supra*.
12. That based on the entire record before the Commission, the Commission must, and hereby does, conclude as a matter of law that the decision of the Douglas County Board of Equalization which set the assessed value of the subject property for tax year 1999 was both unreasonable and arbitrary.
13. That therefore the decision of the Douglas County Board of Equalization must be vacated.

III.

ORDER

1. That the order of the Douglas County Board of Equalization setting the assessed value of the subject property for tax year 1999 is vacated.
2. That Taxpayer's residential real property legally described as Lot 113, Underwood Park 1st Addition, in the City of Omaha, Douglas County, Nebraska, shall be valued as follows for tax year 1999:

Land	\$ 7,000
Improvements	\$58,250
Total	\$65,250
3. That 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. §77-1511 (Reissue 1996).


4. That this decision shall only be applicable to tax year 1999.
5. That each party is to bear its own costs in this matter.

IT IS SO ORDERED.

I certify that Commissioner Edwards made and entered the above and foregoing Findings and Orders in this appeal on the 28th day of March, 2000. The same were approved and confirmed by Commissioner Hans, and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5). (1998 Cum. Supp.)

Signed and sealed this 4th day of April, 2000.





Mark P. Reynolds, Chairman