

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

GARY L. SWARTZ and ANNETTE	)	
SWARTZ,	)	
	)	CASE NO. 04R-17
Appellants,	)	
	)	
vs.	)	FINDINGS AND FINAL ORDER
	)	GRANTING RELIEF REQUESTED
SAUNDERS COUNTY BOARD OF	)	
EQUALIZATION,	)	
	)	
Appellee.	)	

Appearances:

For the Appellant: Gary L. Swartz  
1355 Garraff Avenue  
Wahoo, NE 68066

For the Appellee: Scott J. Tingelhoff, Esq.  
Saunders County Attorney  
433 North Chestnut  
Wahoo, NE 68066

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

**I.  
STATEMENT OF THE CASE**

Gary L. Swartz and Annette Swartz own a 14,850 square foot tract of land legally described as Lot 50, Heritage Heights Addition, City of Wahoo, Saunders County, Nebraska. (E12:2). The tract of land is now improved with a single-family residence with 1,812 square feet of above-grade finished living area built in 2004, but was vacant as of the January 1, 2004 assessment date ("the subject property"). (E3:1).

The State Assessing Official for Saunders County determined that the subject property's actual or fair market value was

\$30,000 as of the January 1, 2004, assessment date. (E1). Gary L. Swartz ("the Taxpayer") timely protested that determination and alleged that the subject property's equalized value was \$12,770. (E1). The Saunders County Board of Equalization ("the Board") denied the protest. (E1).

The Taxpayer appealed the Board's decision on August 10, 2004. The Commission served a Notice in Lieu of Summons on the Board on August 11, 2004, which the Board answered on September 10, 2004. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on December 9, 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 March 23, 2005. The Taxpayer appeared personally at the hearing. The Board appeared through Scott J. Tingelhoff, Saunders County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer.

The Commission afforded each of the Parties the opportunity to present evidence and argument. The Taxpayer testified on his behalf. The Board rested without adducing testimony from any witnesses.

**II.  
ISSUES**

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayer's valuation and equalization protest was incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determination of value was unreasonable.

**III.  
APPLICABLE LAW**

The Taxpayer is 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) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9). 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 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 Taxpayer's assessed value (\$30,000) is equal to the Taxpayer's opinion of actual or fair market value (\$30,000).
2. The subject property's assessed value was not equalized with assessed values of "comparable" properties.

**V.  
ANALYSIS**

The Taxpayer alleged that the subject property's lot value exceeded actual or fair market value. The Taxpayer's only evidence supporting this allegation is opinion testimony that the subject property's actual or fair market value was \$30,000. The assessed value is \$30,000. (E1). The Taxpayer's allegation that the subject property's assessed value exceeds actual or fair market value is not supported by the record.

The Taxpayer also alleges that the subject property's assessed value was not equalized with comparable properties within the City of Wahoo. "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. . . 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). "Where 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).

The Board called no witnesses. The only testimonial evidence in the record before the Commission establishes that at least two other vacant lots sold immediately prior to the January

1, 2004 assessment date. (E10:1; E11:1). The Taxpayer's uncontroverted evidence is that all vacant lots in Wahoo have the same demand and sell on the same basis. The Taxpayer adduced evidence establishing that 66 comparable lots in the Heritage Heights Addition are assessed at \$14,000. While the assessed values of these properties may be attributable to a "developer's discount," nothing in the record confirms this possibility or explains the methodology used to discount assessed values. Furthermore, the assessment to sales ratios of the two sales of comparable lots were 46.47% for each property. (E10:1; E11:1). Nothing in the record explains why the assessed values of these properties do not reflect actual or fair market value.

The Commission must base its decision on the record before it. Neb. Rev. Stat. §77-5016 (Reissue 2003, as amended by 2005 Neb. Laws, L.B. 15, §9). Given the absence of any testimonial evidence from the Board explaining assessment practices or methodologies, the Taxpayer's assessed value of \$30,000 must be equalized with the assessed value of comparable properties. ( $\$30,000 \times 46.47\% = \$13,941$ ).

The Board's decision, in the absence of any testimony to the contrary, is incorrect and both unreasonable and arbitrary. That decision must accordingly be vacated and reversed.

**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) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).
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 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 adduced clear and convincing evidence that the Board's decision was incorrect and both unreasonable or arbitrary. The Taxpayer has also adduced clear and convincing evidence that the Board's determination of value was unreasonable. The Board's decision must be vacated and reversed.

**VII.  
ORDER**

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

1. The Saunders County Board of Equalization's Order setting the subject property's 2004 assessed value is vacated and reversed.
2. The Taxpayer's real property legally described as Lot 50, Heritage Heights Addition, City of Wahoo, Saunders County, Nebraska, more commonly known as 1355 Garraff Avenue, shall be valued as follows for tax year 2004:

Land	\$13,941
Improvements	\$ -0-
Total	\$13,941

3. Any request for relief by any Party not specifically granted by this Order is denied.
4. This decision, if no appeal is filed, shall be certified to the Saunders County Treasurer, and the State Assessing Official for Saunders County, pursuant to Neb. Rev. Stat. §77-5016(9) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).
5. This decision shall only be applicable to tax year 2004.
6. 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 23<sup>rd</sup> day of March, 2005. Commissioner Hans dissented. Commissioner Lore's Findings and Order were, however, approved and confirmed by Commissioners 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, as amended by 2005 Neb. Laws, L.B. 15, §7).

Signed and sealed this 23<sup>rd</sup> day of March, 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, AS AMENDED BY 2005 NEB. LAWS, L.B. 15, §11). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.**

**PLEASE NOTE:** You will only be notified of a change in assessed value for your property for tax year 2005 if the 2005 assessed value differs from the 2004 assessed value as determined by your Assessor or County Board of Equalization. The Commission's decision has no impact on that determination. You should contact your Assessor's Office after March 19, 2005, to determine your property's assessed value for 2005. If you are unsatisfied with that value, you must file a protest on or after June 1, and before July 1, 2005. If you fail to file a protest, there can be no change to the Assessor's determination of the 2005 assessed value for your property.