

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

GEORGE W. KLEIN and EMILY C.)	
KLEIN,)	
)	CASE NO. 02R-12
Appellants,)	
)	DOCKET ENTRY
vs.)	AND ORDER AFFIRMING THE
)	DECISION OF THE COUNTY BOARD
DAWES COUNTY BOARD OF)	OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	

The Nebraska Tax Equalization and Review Commission ("the Commission") called the above-captioned case for a hearing on the merits of the appeal on the 26th day of June, 2003. The hearing was held in the City of Scottsbluff, Scotts Bluff County, Nebraska, pursuant to a Notice of Hearing issued the 2nd day of April, 2003. Commissioners Lore and Reynolds heard the appeal. Commissioner Hans was excused from the proceedings. Commissioner Reynolds, Chair, presided at the hearing.

George W. Klein and Emily C. Klein ("the Taxpayers") appeared personally at the hearing. The Dawes County Board of Equalization ("the Board") appeared through Dennis D. King, Special Appointed Counsel. The Commission made certain documents a part of the record pursuant to Neb. Rev. Stat. §77-5016(5) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9). The Commission also afforded each of the parties the opportunity to present evidence and argument pursuant to Neb. Rev. Stat. §77-5015 (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §8). Each Party was also afforded the opportunity to cross-

examine witnesses of the opposing party as required by Neb. Rev. Stat. §77-5016 (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9).

Neb. Rev. Stat. §77-5018 (Cum. Supp. 2002) 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.
STANDARD OF REVIEW**

The Taxpayer, in order to prevail, is required to demonstrate by clear and convincing evidence that (1) the decision of the Board was incorrect, and (2) that the decision of the Board was unreasonable and arbitrary. *Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9)*. The Supreme Court has determined that the "unreasonable or arbitrary" standard requires clear and convincing evidence that the Board either (1) failed to faithfully perform its official duties; or (2) that the Board failed to act upon sufficient competent evidence in making its decision. *Garvey Elevators v. Adams County Bd.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524

(2001). The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the value as determined by the County was unreasonable. *Garvey Elevators, supra*, 136, 523-524 (2001).

**II.
FINDINGS OF FACT**

The Commission, from the record before it, finds and determines as follows:

**A.
PROCEDURAL FINDINGS**

1. The Taxpayers are the owners of record of certain residential real property located in the City of Chadron, Dawes County, Nebraska ("the subject property").
2. The Dawes County Assessor ("the Assessor") proposed valuing the subject property in the amount of \$199,185 for purposes of taxation as of January 1, 2002 ("the assessment date"). (E1).
3. The Taxpayers timely filed a protest of the proposed valuation and requested that the subject property be valued in the amount of \$146,442. (E1).
4. The protest alleged that the improvement component of the subject property was overvalued. (E1).
5. The Board denied the protest. (E1).

6. Thereafter, the Taxpayers timely filed an appeal of the Board's decision to the Commission. (Appeal Form).
7. The Commission served a Notice in Lieu of Summons on the Board on or about August 28, 2002. The Board timely filed an Answer on September 3, 2002.
8. The Commission issued an Order for Hearing and Notice of Hearing on April 2nd, 2002. The Notice set the matter for a hearing on the merits of the appeal for June 26, 2003.
9. The only issue before the Commission is the value of the improvement component of the subject property.
10. The Board moved to dismiss the appeal at the close of the Taxpayers' case-in-chief for failure to prove a prima facie case. The Motion was denied.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The subject property is a tract of land approximately five acres in size which is legally described as Lot 14, Hidden Valley Estates Addition, City of Chadron, Dawes County, Nebraska. (E93:1).
2. The tract of land is improved with a single-family residence which was built in 1977. (E93:2). The residence is a one-story home with 2,750 square feet of above-grade finished living area, with a full basement. (E93:2). The basement

is 2,710 square feet in size. 2,176 square feet of the basement is finished. (E93:2).

3. The entire home is constructed of poured concrete. The home is equipped with three heat pumps, and has a low cooling cost, but a very high heating cost.
4. The Assessor determined that the house is of "Average" Quality of Construction and "Average" Condition. (E93:2).
5. The Taxpayer testified that he acquired the subject property in 1999 for \$125,000. The Taxpayer further testified that based on an 8% rate of appreciation compounded annually, the actual or fair market value of the subject property should be no more than \$157,464.
6. The Taxpayer testified that the actual or fair market value of the subject property was between \$157,464 and \$160,000 as of the assessment date.
7. The improvement component of the subject property was valued using the Cost Approach. Under professionally accepted mass appraisal methodologies, the Cost Approach includes six steps: "(1) Estimate the land (site) value as if vacant and available for development to its highest and best use; (2) Estimate the total cost new of the improvements as of the appraisal date, including direct costs, indirect costs, and entrepreneurial profit from market analysis; (3) Estimate the total amount of accrued depreciation attributable to

physical deterioration, functional obsolescence, and external (economic) obsolescence; (4) Subtract the total amount of accrued depreciation from the total cost new of the primary improvements to arrive at the depreciated cost of improvements; (5) Estimate the total cost new of any accessory improvements and site improvements, then estimate and deduct all accrued depreciation from the total cost new of these improvements; (6) Add site value to the depreciated cost of the primary improvements, accessory improvements, and site improvements, to arrive at a value indication by the cost approach." *Property Assessment Valuation, 2nd Ed.*, International Association of Assessing Officers, 1996, pp. 128 - 129.

8. "Physical deterioration is the loss in value due to wear and tear in service and the disintegration of an improvement from the forces of nature. All man made objects begin a slow process of deterioration as soon as they are created . . . Among the most common causes of physical deterioration are wear and tear through use, breakage, negligent care, infestation of termites, dry rot, moisture, and the elements. *Property Assessment Valuation, 2nd Ed.*, International Association of Assessing Officers, 1996, pp. 154.

9. The Assessor attributed a 10% physical depreciation factor to the improvement component of the subject property. (E93:2). The Taxpayers adduced no evidence to establish that this physical depreciation factor was incorrect, unreasonable or arbitrary.
10. "External Obsolescence is loss in value as a result of an impairment in utility and desirability caused by factors external to the property (outside the property's boundaries) and is generally deemed to be incurable." *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, pp. 155.
11. The Assessor attributed a 19% external or economic obsolescence factor to the improvement component of the subject property. (E93:2). The Taxpayers adduced no evidence to establish that this external or economic obsolescence depreciation factor was incorrect, unreasonable or arbitrary.
12. "Functional utility is the overall usefulness and desirability of a property; the ultimate criterion is whether the improvement efficiently satisfies the wants and needs of the market. Functional obsolescence is the loss of value in a property improvement due to changes in style, taste, technology, needs and demands. Functional obsolescence exists where a property suffers from poor or

inappropriate architecture, lack of modern equipment, wasteful floor plans, inappropriate room sizes, inadequate heating or cooling capacity, and so on. It is the ability of a structure to perform adequately the function for which it is currently used." *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, pp. 154 - 155.

13. The Taxpayer testified that the lack of adequate insulation and resulting high heating costs, and the presence of an unused lap pool which is nine feet by twenty-seven feet in size and which has no pump or working circulation system represented functional obsolescence. The Taxpayer, however, was unable to quantify the impact of these features on actual or fair market value.
14. The Taxpayer has not adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the Board.
15. The decision of the Board must therefore be affirmed.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and 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

action of the County was unreasonable or arbitrary. *Neb. Rev. Stat. §77-5016(7) (Cum. Supp.2002, as amended by 2003 Neb. Laws, L.B. 291, §9)*. 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. The Supreme Court has also held that "In an appeal to the county board of equalization or to [the Tax Equalization and Review Commission] and from the [Commission] to this court, 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." *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).

4. "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).
5. 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).

**IV.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the order of the Dawes County Board of Equalization setting the assessed value of the subject property for tax year 2002 is affirmed.
2. That the Taxpayers' residential real property legally described as Lot 14, Hidden Valley Estates, Dawes County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$ 11,760
Improvements	\$187,425
Total	\$199,185

3. That any request for relief by any party not specifically granted by this order is denied.
4. That this decision, if no appeal is filed, shall be certified to the Dawes County Treasurer, and the Dawes County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9).
5. That this decision shall only be applicable to tax year 2002.
6. That 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 26th day of June, 2003. The same were approved and confirmed by Commissioner Reynolds and are therefore deemed to be the Order of the

Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §6).

Signed and sealed this 2nd day of July, 2003.

SEAL

Mark P. Reynolds, Chair