

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

JEROME D. KOWALSKI and)	
PATRICIA A. KOWALSKI,)	
)	CASE NO. 02R-81
Appellants,)	
)	AMENDED
vs.)	DOCKET ENTRY
)	AND ORDER
SHERMAN COUNTY BOARD OF)	REVERSING THE DECISION
EQUALIZATION,)	OF THE COUNTY
)	BOARD OF 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 12th day of June, 2003. The hearing was held in the City of Kearney, Buffalo County, Nebraska, pursuant to a Notice of Hearing issued the 6th day of March, 2003. Commissioners Hans, Wickersham, and Reynolds heard the appeal. Commissioner Wickersham, Vice-Chair, presided at the hearing.

Jerome D. Kowalski and Patricia A. Kowalski ("the Taxpayers") appeared personally at the hearing. The Sherman County Board of Equalization ("the Board") appeared through Curtis A. Sikyta, 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 Taxpayer is the owner of record of certain agricultural real property located in Sherman County, Nebraska ("the subject property").
2. The State Assessing Official for Sherman County proposed valuing the subject property in the amount of \$199,660 for purposes of taxation as of January 1, 2002 ("the assessment date"). (E1).
3. The Taxpayer timely filed a protest of the proposed valuation and requested that the subject property be valued in the amount of \$147,284. (E1).
4. The protest alleged that (1) the Taxpayer was assessed for property he didn't own, and (2) the assessed value of the property owned by the Taxpayer exceeded values authorized by

- law; and (3) the proximity of the Taxpayers' agricultural operations adversely impacted actual or fair market value. (E1).
5. The Board denied the Taxpayer's request to reduce the proposed value of the subject property. The Board determined that the actual or fair market value of the subject property as of the assessment date was \$217,465. (E1).
 6. Thereafter, the Taxpayer 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 September 6, 2002. The Board timely filed an Answer on September 18, 2002.
 8. The Commission issued an Order for Hearing and Notice of Hearing on March 6, 2003. An Amended Notice set the matter for a hearing on the merits of the appeal for June 12, 2003.
 9. The Parties stipulated that the value of the land designated as "wasteland" and which had an assessed value of \$2,375 should be removed from the assessed value of the subject property.
 10. The remaining value of the land component of the subject property (\$45,600) is not at issue.
 11. The uncontroverted evidence establishes that the assessed value of the subject property was increased by the Board

after the hearing which the Taxpayer attended. The Taxpayer was not present at the subsequent meeting at which the assessed value of the subject property was raised. The Taxpayer was not provided written notification of the day and time of the meeting at which the assessed value of his property was increased. The Taxpayer was not provided written notification of the fact that the assessed value of his property might be increased.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The subject property is a tract of land approximately 151 acres in size. The tract of land is legally described as the NE 1/4 of Section 10, Township 16, Range 15. (E5:6). The tract of land is improved with certain agricultural outbuildings and a single-family residence. The residence is a ranch-style home which was built in 1995. The home has 1,992 square feet of above-grade finished living area over a full basement. (E5:10).
The Taxpayer testified that the value of the residential improvements was \$100,000.
3. The Board's determination of value of the improvements was based on the Cost Approach. (E21:10).
4. The Cost Approach, under professionally accepted mass appraisal methodologies, has 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*,^{2d} Ed., International Association of Assessing Officers, 1996, pp. 128 - 129.

5. The Taxpayer adduced evidence establishing that the nearest Village to the subject property is Loup City, the county seat of Sherman County. Residential real property improvements in Loup City have a 15% economic or external

depreciation factor. No economic or external depreciation factor was attributed to the subject property.

6. "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.
7. The residential properties in Loup City have access to a grocery store, schools, and other service facilities. The subject property is located 8 miles from those facilities. Furthermore, the uncontroverted evidence establishes that improved residential real property in Sherman County is overvalued. (E5:27).
8. The Taxpayers' property, being further from the services of Loup City, should also have an economic or external obsolescence factor of at least 15%.
9. The Taxpayer adduced no evidence quantifying the impact on actual or fair market value of the proximity of 100 sows and hogs which are located approximately 200 feet from the Taxpayers' residence.
10. The Taxpayers alleged that the value of the agricultural outbuildings exceeded actual or fair market value. The Board had an affirmative obligation to prepare and submit

copies of any records establishing the method and value of the property. *See, Order for Hearing*, March 6, 2003, p. 3. The State Appraiser testified that no such documents were provided to the Taxpayer or to the Commission. The State Appraiser further testified that the assessed value of the agricultural outbuildings had not been changed since at least 1998.

11. Although the Cost Approach was used to value all improvements, no additional depreciation had been attributed to the agricultural outbuildings in the four years between the 1998 value and the 2002 value. The State Appraiser offered no opinion of value for the agricultural outbuildings.
12. The Taxpayer testified that in his opinion the actual or fair market value of the outbuildings was \$25,000. This is the only competent and credible of evidence in the record for this component of the subject property.
13. **STRICKEN (See Order to Show Cause) .**
14. The Commission, from the entire record before it, finds and determines that the **County Board of Equalization's determination of value of the residential improvements was \$141,365.** An additional External or Economic Depreciation Factor of 15% (**\$141,365 x 15% = \$21,205**) must be attributed to those improvements. The application of this factor

results in an indicated value of **\$120,160.** (**\$141,365 - \$21,205 = \$120,160**).

15. The Taxpayer has adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the Board.
16. The assessed value of the subject property for tax year 2002 as determined by the Board is not supported by the evidence.
17. Therefore the decision of the Board was incorrect, unreasonable and arbitrary.
18. The decision of the Board must be vacated and reversed.

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. "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).
5. "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. 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. **Stricken. (See Order to Show Cause).**
8. **Stricken. (See Order to Show Cause).**
9. **Stricken. (See Order to Show Cause).**

**IV.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the order of the Sherman County Board of Equalization setting the assessed value of the subject property for tax year 2002 is vacated and reversed.
2. That the Taxpayer's agricultural real property legally described as the NE $\frac{1}{4}$ of Section 10, Township 16, Range 15, in Sherman County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$ 45,600	
Improvements		
House	\$120,160	(See Order to Show Cause).
Outbuildings	\$ 25,000	
Total	\$190,760	(See Order to Show Cause).

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 Sherman County Treasurer, and the Sherman County State Assessing Official, 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.

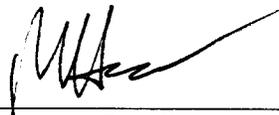
6. That each party is to bear its own costs in this matter.

IT IS SO ORDERED.

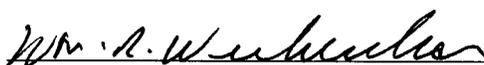
Dated this 29th day of July, 2003.



Seal



Robert L. Hans, Commissioner



Wm. R. Wickersham, Vice-Chair



Mark P. Reynolds, Chair