

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

DAVID E. ABBOUD,)	CASE NO. 02C-5
)	02C-6
Appellant,)	02C-7
)	
vs.)	DOCKET ENTRY
)	AND ORDER
HALL COUNTY BOARD OF)	AFFIRMING 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 10th day of September, 2003. The hearing was held in the City of Kearney, Buffalo County, Nebraska, pursuant to a Notice of Hearing issued the 13th day of June, 2003. Commissioners Hans, Lore, Wickersham, and Reynolds heard the appeal. Commissioner Reynolds, Chair, presided at the hearing.

David E. Abboud ("the Taxpayer") appeared personally at the hearing. The Hall County Board of Equalization ("the Board") appeared through Jerom E. Janulewicz, the Hall County Attorney. 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.
APPLICABLE LAW

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 multi-family real property located in the City of Grand Island, Hall County, Nebraska ("the subject property").
2. The Hall County Assessor ("the Assessor") proposed valuing the subject property in Case Number 02C-5 in the amount of \$102,864 for purposes of taxation as of January 1, 2002 ("the assessment date"). (E1).
3. The Assessor proposed valuing the subject property in Case Number 02C-6 in the amount of \$102,864 for purposes of taxation as of the assessment date. (E2).
4. The Assessor proposed valuing the subject property in Case Number 02C-7 in the amount of \$101,792 for purposes of taxation as of the assessment date. (E3).

5. The Taxpayer timely filed a protest of the proposed valuations and requested that the proposed values be reduced. (E1; E2; E3).
6. The protests alleged that the proposed values exceeded actual or fair market value. (E1; E2; E3).
7. The Board granted the Taxpayer's protest in part in Case Number 02C-5, and determined that the actual or fair market value of the subject property as of the assessment date was \$99,538. (E1).
8. The Board also granted the Taxpayer's protest in part in Case Number 02C-6, and determined that the actual or fair market value of the subject property as of the assessment date was \$83,643. (E1).
9. The Board denied the protest in Case Number 02C-7, and determined that the actual or fair market value of the subject property as of the assessment date was \$101,792 as recommended by the Assessor. (E1).
10. Thereafter, the Taxpayer timely filed appeals of the Board's decisions to the Commission. (Appeal Form).
11. The Commission served a Notice in Lieu of Summons on the Board on August 12, 2002 in each appeal. The Board timely filed an Answer in each appeal on August 27, 2002.

12. The Commission issued an Order for Hearing and Notice of Hearing on June 13, 2003. The Notice set the matter for a hearing on the merits of the appeal for September 10, 2003.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The real property in Case Number 02C-5 is a tract of land legally described as Lot 7, Block 152, Union Pacific 2nd Addition, Grand Island, Nebraska. The property is more commonly known as 616 East Sutherland Street, and is improved with a two-story apartment building and a 5-unit garage. (E6:106; E6:105). The apartment building has 4 units, and is Class "D," (i.e., wood) construction. (E6:106). The apartment building was built in 1970. (E6:106).
2. The real property in Case Number 02C-6 is a tract of land legally described as Lot 2, Block 152, Union Pacific 2nd Addition, Grand Island, Nebraska. The property is more commonly known as 619 East Yund Street and is improved with a two-story apartment building. (E6:14). The apartment building has 4 units (E6:19), and is of Class "D" construction. (E6:15). The apartment building was built in 1970. (E6:15).
3. The real property in Case Number 02C-7 is a tract of land legally described as Lot 8, Block 152, Union Pacific 2nd

Addition, Grand Island, Nebraska. The property is more commonly known as 622 and 624 Sutherland Street and is improved with a two-story apartment building and a 9-unit garage. (E6:154). This apartment building has 4 units, and is of Class "D" construction. (E6:155). The apartment building was built in 1970. (E6:154).

4. The Taxpayer either financed the purchase of or refinanced the purchase of each of the properties in 1998. The Taxpayer, as part of this finance or refinancing, secured real estate appraisals for each of the subject properties. The resulting opinions of value were \$118,000 in Case Number 02C-5 (E6:117); \$108,000 in Case Number 02C-6 (E6:22); and \$125,000 in Case Number 02C-7 (E6:117). The effective date of these appraisals was October 28, 1998. (E6:117; E6:22; E6:164).
5. The Taxpayer owns, through a corporation, approximately 12 commercial properties. The Taxpayer has been in the commercial real estate business for approximately 40 years.
6. The Taxpayer testified that his opinion the actual or fair market value of each of the subject properties was between \$60,000 and \$68,000.
7. The Board's retained the services of an outside appraiser licensed by the State of Nebraska. The Board's Appraiser testified that in his opinion the actual or fair market

value of the subject property in Case Number 02C-5 was \$101,000 as of the assessment date. (E6:127).

8. The Board's Appraiser testified that in his opinion the actual or fair market value of the subject property in Case Number 02C-6 was \$87,000 as of the assessment date. (E6:36).

9. The Board's Appraiser testified that in his opinion the actual or fair market value of the subject property in Case Number 02C-7 was \$115,000 as of the assessment date. (E6:174).

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 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. "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 appraisals prepared for the Taxpayer in 1998, when correlated to the Taxpayer's opinion of value as of the assessment date, require the Commission to conclude either that the multi-family housing market in Grand Island decreased by 15% per year between the October, 1998, appraisal date and the January 1, 2002, assessment date, or that something unique to the properties resulted in the decrease. Nothing in the record supports this conclusion.
7. The Taxpayer has not adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the Board.
8. The assessed value of the subject property for tax year 2002 as determined by the Board for each of the subject properties at issue is supported by the evidence.
9. The decision of the Board was correct, and was neither unreasonable nor arbitrary.
10. Therefore the decision of the Board must be affirmed.

**IV.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the orders of the Hall County Board of Equalization setting the assessed value of the subject properties for tax year 2002 is affirmed.

2. That in Case Number 02C-5 the Taxpayer's multi-family real property legally described as Lot 7, Block 152, Union Pacific 2nd Addition, Grand Island, Nebraska, more commonly known as 616 East Sutherland Street, shall be valued as follows for tax year 2002:

Land	\$14,594
Improvements	\$84,944
Total	\$99,538

3. That in Case Number 02C-6, the Taxpayer's multi-family real property in Case Number 02C-6 legally described as Lot 2, Block 152, Union Pacific 2nd Addition, Grand Island, Nebraska, more commonly known as 619 East Yund Street, shall be valued as follows for tax year 2002:

Land	\$18,670
Improvements	\$64,973
Total	\$83,643

4. That in Case Number 02C-7, the Taxpayer's real property legally described as Lot 8, Block 152, Union Pacific 2nd Addition, Grand Island, Nebraska, more commonly known as 622

and 624 Sutherland Street shall be valued as follows for tax year 2002:

Land	\$ 22,384
Improvements	\$ 79,408
Total	\$101,792

5. That any request for relief by any party not specifically granted by this order is denied.
6. That this decision, if no appeal is filed, shall be certified to the Hall County Treasurer, and the Hall County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9).
7. That this decision shall only be applicable to tax year 2002.
8. 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 10th day of September, 2003. The same were approved and confirmed by Commissioners Lore and Wickersham, 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 12th day of September, 2003.

SEAL

Mark P. Reynolds, Chair