

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

PATRICK R. POKORSKI and	)	
VIRGINIA A. POKORSKI,	)	
	)	CASE NO. 02C-93
Appellant,	)	
	)	DOCKET ENTRY
vs.	)	AND ORDER
	)	AFFIRMING THE DECISION
SHERMAN COUNTY BOARD OF	)	OF THE COUNTY
EQUALIZATION,	)	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 10<sup>th</sup> day of June, 2003. The hearing was held in the City of Kearney, Buffalo County, Nebraska, pursuant to a Notice of Hearing issued the 6<sup>th</sup> day of March, 2003. Commissioners Hans, Wickersham, and Reynolds heard the appeal. Commissioner Wickersham, Vice-Chair, presided at the hearing.

Virginia A. Pokorski ("the Taxpayer") appeared personally at the hearing, and with her son Rodney L. Pokorski. 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**

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

**A.  
PROCEDURAL FINDINGS**

1. The Taxpayer is the owner of record of certain commercial real property located in the Village of Ashton, Sherman County, Nebraska ("the subject property").
2. The State Assessing Official for Sherman County ("the State Assessing Official") proposed valuing the subject property in the amount of \$54,085 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 \$34,450. (E1).
4. The protest alleged that the assessed value of the improvement component of the subject property was not equalized with comparable property. (E1:2).
5. The Board denied the protest. (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 10, 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. The Notice set the matter for a hearing on the merits of the appeal for June 10, 2003.
9. The Taxpayer did not protest the assessed value of the land component of the subject property (\$670). (E1).

**B.**  
**SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS**

1. The subject property is a tract of land approximately 7,420 square feet in size. [53 feet x 140 feet = 7,420 square feet]. (E2:2). The tract of land is legally described as the South 3 Feet of Lot 8 and All of Lots 9 and 10, Original Town of Ashton, Sherman County, Nebraska. The tract of land is improved with two buildings. The size of the improvements is in dispute.
2. The 2000 and 2001 assessed value of the property was \$34,360. (E2:1). The assessed value of the land component was \$580. (E2:1). The assessed value of the improvement component was \$33,780. (E2:1).

3. The assessed value of the improvement component of the subject property increased by 58% for tax year 2002. (E2:1). The basis of this adjustment is the removal of a functional depreciation factor; the removal of an external or economic obsolescence factor; and the increase in the "base costs" (the cost factors used to calculate Replacement Cost New). (E18:9 - 15).
4. "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*, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, pp. 154 - 155.
5. The State Assessing Official's Appraiser testified that the Assessing Official's Office could find no evidence establishing why the functional obsolescence factor had

previously been attributed to the improvement component of the subject property. The Taxpayer adduced no evidence of "functional obsolescence" which should be attributed to the subject property.

6. "Economic depreciation" is also known as "External Obsolescence." "External obsolescence" is the 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, 2<sup>nd</sup> Ed.*, International Association of Assessing Officers, 1996, pp. 155.
7. The Village of Ashton has a population of 270. The elementary school in Ashton closed in 1999. The school closing had an adverse impact of real property values in Ashton.
8. The Taxpayer adduced no evidence quantifying the impact of these facts on actual or fair market value. Furthermore, the only issue before the Commission is equalization, not valuation. The Taxpayer failed to adduce any evidence that the subject property was the only property for which the factors were removed.

9. The Taxpayer further alleged that the lack of equalization was caused by "sales chasing," i.e., only properties which were sold had a change in assessed values.
10. The Taxpayer adduced Exhibits 3 and 19, which are spreadsheets showing the change in assessed values for all improved commercial properties in Ashton. There are twenty properties shown. Only four of those properties sold. Each of the twenty properties shown had an increase in assessed values for tax year 2002.
11. The increases in assessed values shown on Exhibit 19 range from a low of 3.77% to a high of 58.13% for the subject property.
12. The Board's determination of value for the subject property is based on Exhibit 2, page 6. (See also Exhibits 18, pages 9 through 15). The Exhibit establishes five component parts. The Replacement Cost New for each component is shown based on the per square foot costs. The Taxpayer, however, measured the size of the improvements, and determined the gross area to be 5,435 square feet. (E20). The Board stipulated that the external dimensions of the subject property were 5,435 square feet.
13. The Board based its determination on a gross area of 4,648 square feet. (E2:5). The calculation by would the Board

would, therefore, understate the Replacement Cost New Less Depreciation for the subject property.

14. The Taxpayer did not testify.
15. The Taxpayer adduced the testimony of her son, a Certified General Appraiser licensed by the State of Nebraska. The Taxpayer's son is also employed by another Nebraska County as an appraiser.
16. The Taxpayer's son did not prepare an appraisal of the subject property.
17. The Taxpayer's son testified that the value of the property was \$41,110. However, this opinion of value was based on the Board's determination of value from a previous year. This opinion was based on flawed information, as set forth above.
18. The Taxpayer adduced no other evidence of actual or fair market value of the subject property. The Commission, in the absence of this evidence cannot conclude from the record before it that there is a lack of equalization of assessments.
19. The Taxpayer has not adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the Board.
20. Therefore the decision of the Board must 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 County 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. "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. 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." *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).

6. 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).

**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 affirmed.
2. That the Taxpayer's commercial real property legally described as the South 3 Feet of Lot 8 and All of Lots 9 and 10, Block 5, Original Town, Village of Ashton, Sherman County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$ 670
Improvements	\$53,415
Total	\$54,085
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 to the State Assessing Official for Sherman County, 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 Reynolds made and entered the above and foregoing Findings and Orders in this appeal on the 10<sup>th</sup> day of June, 2003. 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) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §6).

Signed and sealed this 19<sup>th</sup> day of June, 2003.

*Mark P. Reynolds, Chair*