

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

WILBURN J. MASTERS)	
)	
Appellant,)	CASE NO. 02R-3
)	
vs.)	FINDINGS AND ORDER
)	AFFIRMING THE DECISION OF THE
MADISON COUNTY BOARD OF)	MADISON COUNTY BOARD OF
EQUALIZATION,)	EQUALIZATION
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Wilburn J. Masters to the Tax Equalization and Review Commission ("the Commission"). The hearing was held at Conference Room C, Holiday Inn Express, 920 South 20th St, in the City of Norfolk, Madison County Nebraska. Commissioners Wickersham, Reynolds, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Wilburn J. Masters ("the Taxpayer") appeared at the hearing. The Madison County Board of Equalization ("the County Board") appeared through counsel, Joel E. Carlson, Esq., a Deputy County Attorney for Madison County, Nebraska. The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Cum. Supp. 2002) to state its final decision concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case is as follows.

I.
STANDARD OF REVIEW

The appellant, in order to prevail, is required to demonstrate by clear and convincing evidence that the decision of the County Board was incorrect and arbitrary or unreasonable. Neb. Rev. Stat. § 77-5016(7) (Cum. Supp. 2002, as amended Neb. Laws, L.B. 291, §9). The presumption created by the statute can be overcome if the Taxpayer shows by clear and convincing evidence that the County Board either failed to faithfully perform its official duties or that the County Board failed to act upon sufficient competent evidence in making its decision. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524, (2001). It is the Taxpayer's burden to overcome the presumption with clear and convincing evidence of more than a difference of opinion. *Garvey Elevators, Inc v. Adams County Bd. of Equalization* , 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 Board was unreasonable. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524, (2001).

**II.
FINDINGS**

The Commission finds and determines that:

**A.
PROCEDURAL FINDINGS**

1. The Taxpayer is the owner of record of certain residential real property described in the appeal as Verges Suburban Lot 3 and E 24ft Lot 4 in Block 4 and Pt of vacated alley, Madison County, Nebraska ("the subject property").
2. The actual or fair market value as of January 1, 2002, ("the assessment date") for the subject property, placed on the assessment roll by the Madison County Assessor was:

Land value	\$ 9,918.00
Improvement value	<u>\$89,681.00</u>
Total value	<u>\$99,599.00.</u>
3. The Taxpayer timely protested that value to the County Board. The Taxpayer proposed the following value:

Land value	\$ 9,724.00
Improvement value	<u>\$87,923.00</u>
Total value	<u>\$97,647.00.</u>
4. The County Board denied the protest. (E:1)
5. The Taxpayer timely filed an appeal of that decision to the Commission.
6. The County Board was served with a Notice in Lieu of Summons, and duly answered that Summons.

7. A Notice and Order for Hearing issued on February 21, 2003, set a hearing of the Taxpayer's appeal for May 29, 2003, at 10:00 a.m. CST.
8. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Notice and Order for Hearing was served on all parties.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The subject property, Verges Suburban Lot 3 and E 24ft Lot 4 in Block 4 and Pt of vacated alley, Madison County, Nebraska, is owned by the Taxpayer.
2. The subject property is improved with a ranch style single family residence. The residence, built in 1969, contains 1,544 square feet of living area plus a full basement. The assessor has assigned a condition of "average" to the residence, rated its quality of construction as "average" and allowed 24% depreciation. A 720 square feet detached garage was added to the subject property in 1997. (E8:2)
3. The Taxpayer offered five properties, Exhibits 2, 3, 4, and 5, as "comparable properties".
4. "Comparable properties" share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 98. That when using "comparables" to

determine value, similarities and differences between the subject property and the comparables must be recognized.

Property Assessment Valuation, 2nd Ed., 1996, p.103. Most adjustments are for physical characteristics. *Property Assessment Valuation*, 2nd Ed., 1996, p.105.

5. Exhibit 2 describes a one story, 1,208 square foot, single family residence with a full basement built in 1955. Its condition was rated by the Assessor as "average", its quality of construction as "fair+" and 34% depreciation was allowed. (E2:2)
6. Exhibit 3 describes a one story, 1,248 square foot, single family residence with a full basement built in 1956. Its condition was rated by the Assessor as "average", its quality of construction as "fair+", and 32% depreciation was allowed. (E3:2)
7. Exhibit 5 describes a two story single family residence with 1,742 square feet in its total area and a 1,068 square foot basement, built in 1954. Its condition was rated by the Assessor as "average", its quality of construction as "average" and 34% depreciation was allowed. (E5:2)
8. Exhibit 6 describes a single story, 1,284 square foot single family residence built in 1954. Its condition was rated by the Assessor as "average" and its quality of construction as "average", and 34% depreciation was allowed. (E6:2)

9. Exhibit 7 describes a single story, 1,064 square foot, single family residence built in 1955. Its condition was rated by the Assessor as "average", its quality of construction as "fair+", and 36% depreciation was allowed.
10. The subject property improvements are larger than all of the offered comparables except Exhibit 5 a two story residence. The subject property improvements are newer than any of the offered comparables and has been assigned less deprecation than any of the offered comparables.
11. The comparables offered by the Taxpayer are not truly comparable.
12. The Taxpayer testified that the presence of an apartment house with bottle tossing tenants adjacent to the subject property reduced its value as did commercial traffic.
13. The Taxpayer did not offer any testimony or other evidence concerning the amount of reduction in value for the subject property attributable to the apartment house or commercial traffic.
14. The Taxpayer did not offer his opinion of value for the subject property.
15. The Taxpayer has not adduced sufficient, clear and convincing evidence to overcome the statutory presumption in favor of the County Board.

16. Based on the entire record before it, the Commission finds and determines that the actual or fair market value of the subject property for the tax year 2002 is:

Land value	\$ 9,918.00
Improvement value	<u>\$89,681.00</u>
Total value	<u>\$99,599.00.</u>

17. The value of the subject property as of the assessment date determined by the County Board is supported by the evidence.
18. The decision of the County Board was correct and neither arbitrary nor unreasonable.
19. The decision of the County Board should be affirmed.

**III.
CONCLUSIONS OF LAW**

1. Subject matter jurisdiction of the Commission is over all issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998)
2. The Commission has jurisdiction over the parties and the subject matter of this appeal.
3. The Commission, while making a decision, may not consider testimony, records, documents or other evidence which is not a part of the hearing record except those identified in the Commissions rules and regulations or Section 77-5016 (3). Neb. Rev. Stat. §77-5016(3) (Cum. Supp. 2002, as amended by 2003 Neb. Laws L.B. 291, §9).

4. The Taxpayer must adduce evidence establishing that the action of the County Board was incorrect and unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002, as amended by 2003 Neb. Laws 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 Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523, (2001).
5. The Commission, while making a decision, may not consider testimony, records, documents or other evidence which is not a part of the hearing record. Neb. Rev. Stat. §77-5016(3) (Cum. Supp. 2002, as amended Neb. Laws, L.B. 291, §9).
6. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which

could lead a reasonable person to the same conclusion.

Phelps Cty. Bd. of Equal. v. Graf, 258 Neb 810, 606 N.W.2d 736, (2000).

7. The term "unreasonable" can be applied to a decision of an administrative agency only if the evidence presented leaves no room for differences of opinion among reasonable minds.
Pittman v. Sarpy Cty. Bd. of Equal., 258 Neb 390, 603 N.W.2d 447, (1999).
8. The 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).
9. "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 Equalization, 256 Neb. 7, 16, 588 N.W.2d 575, 581, (1999).

10. 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 County Board determining the subject property as of the assessment date, January 1, 2002, as follows:

Land value	\$ 9,918.00
Improvement value	<u>\$89,681.00</u>
Total value	<u>\$99,599.00</u>

is affirmed.

2. That this decision, if no appeal is timely filed, shall be certified to the Madison County Treasurer, and the Madison County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2002).
3. That any request for relief, by any party, which is not specifically provided for by this order is denied.
4. That each party is to bear its own costs in this matter.
5. That this decision shall only be applicable to tax year 2002.

6. This order is effective for purposes of appeal June 19, 2003.

IT IS SO ORDERED.

Dated June 19, 2003.

Wm R. Wickersham, Vice-Chairman

Susan S. Lore, Commissioner

Robert L. Hans, Commissioner

Mark P. Reynolds, Chairman

SEAL