

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

DONALD D. LANDON and BETTE I.)	
LANDON,)	
)	CASE NO. 02R-79
Appellants,)	
)	DOCKET ENTRY
vs.)	AND ORDER
)	REVERSING 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 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.

Donald D. Landon and Bette I. Landon ("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 Taxpayers, in order to prevail, are 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 agricultural real property located in the 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 \$223,835 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 \$183,835. (E1).
4. The protest alleged that the improvement component of the subject property was overvalued. (E1).

5. The Board granted the protest in part and determined that the actual or fair market value of the subject property as of the assessment date was \$217,560. (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 the 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 value of the land component of the subject property (\$113,185) is not at issue.
10. The value of the agricultural outbuilding component of the subject property (\$15,360) is not at issue.
11. The value of the 10 foot by 16 foot shed (\$225), pursuant to the Order of the Board, was to be removed. The total value shown by the Board, however, includes this value. That value must be removed.
12. The Board admitted at the beginning of the hearing that the detached garage on the subject property which had an assessed value of \$8,408 was incorrectly valued based on a size of 636 square feet. The Board stipulated that the

actual or fair market value of the detached garage was \$1,080.

B.
SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The subject property is a tract of land approximately 283 acres in size. The tract of land is legally described as the N½ & Lots 2 & 3, Section 20, Township 16, Range 15, Sherman County, Nebraska. (E21:8).
2. The tract of land is improved with a single-family residence which was built in 1973. The residence is a ranch-style home with 1,280 square feet of above-grade finished living area over a full basement. (E21:10). Less than one-half of the basement is finished, and that finish is a "partition finish." The home also has a two-car attached garage, and a detached garage. There are also a number of agricultural outbuildings. (E21:10).
3. The improvements were valued using 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*, 2nd Ed., International Association of Assessing Officers, 1996, pp. 128 - 129.

5. The Taxpayers alleged that the assessed values of six single-family residential properties Sherman County support their allegation that the subject property was overvalued. (E14 - E19).
6. "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. 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.* "Financing terms, market conditions, location, and physical characteristics are items that must be considered when making adjustments . . ." *Property Assessment Valuation, 2nd Ed., 1996, p. 98.*

7. Each of the properties offered as a "comparable" property is located in Loup City, a town approximately 10.5 miles from the subject property. Each of the properties in Loup City has a different physical depreciation factor. Each of the properties also has an "Economic Depreciation" factor of 15%.
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. Physical depreciation may be calculated in a number of ways. One method is the "economic age life method." "In the economic age-life method, an estimate is made both of the effective age of the improvement and of its remaining economic life. The effective age and the remaining economic life together make up the life span of the improvement. The ratio of the effective age to the life span, times the cost new of the structure is a measure of the depreciation." *Property Assessment Valuation, 2nd Ed.*, International Association of Assessing Officers, 1996, pp. 161.
10. "Effective age may or may not be the same as actual or chronological age, because maintenance, design, and location are factors that may increase or decrease the aging process. The remaining economic life of the improvement will, in most cases, be something less than the remaining physical life. Within the same improvement-use type, location will be an important consideration in the determination of economic life. For many uses, economic life in a large, fast growing, and relatively new city will be much shorter than economic life expectancy for the same property use in an older, smaller city." *Property Assessment Valuation, 2nd*

Ed., International Association of Assessing Officers, 1996, pp. 161.

11. The Board was unable to present clear and convincing evidence justifying the basis for the Physical Depreciation factors used to value other properties.
12. Using the economic age life methodology, with an effective age of 14 years as determined by the Board, the Physical Depreciation Factor attributed to the improvements to the subject property should be 28%. (Life of improvements 50 years from *Marshall-Swift Residential Cost Handbook* ÷ 14 years effective age = 28%).
13. The Taxpayers, as noted above, adduced evidence establishing that all of the properties offered as "comparables" had an "economic" or "external obsolescence" factor of 15%.
14. "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.
15. The properties in Loup City have a grocery store, schools, and other service facilities. The subject property is located 10.5 miles from those facilities. Furthermore, the uncontroverted evidence establishes that improved

residential real property in Sherman County is overvalued.
(E21:27).

16. The Taxpayers has adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the Board.
17. The Commission, based on the entire record before it, finds and determines that the actual or fair market value of the residential improvement component of the subject property as of the assessment date was \$61,494. [Replacement Cost New of \$91,840 for residence + \$8,640 for attached garage = \$100,480 less Physical Depreciation of 28% (\$28,134) = \$72,346, Less 15% Economic or External Obsolescence (\$10,852) = \$61,494].
18. The assessed value of the subject property for tax year 2002 as determined by the Board is not supported by the evidence.
19. Therefore the decision of the Board was incorrect, unreasonable and arbitrary.
20. 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).

**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 Taxpayers's agricultural real property legally described as Pt N½ & Lots 2 & 3, Section 20, Township 16, Range 15, Sherman County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$113,185
Improvements	
House	\$ 61, 494
Det. Gar.	\$ 1,080
Shed	\$ -0- Removed per Order of Board
Outbld.	\$ 15,360
Total	\$191,119

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 Hans made and entered the above and foregoing Findings and Orders in this appeal on the 12th day of June, 2003. The same were approved and confirmed by Commissioners Reynolds and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Cum. Supp. 2002).

Signed and sealed this 19th day of June, 2003.

Mark P. Reynolds, Chair