

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

JOHN W. DECAMP,	)	
	)	
Appellant,	)	CASE NO. 02C-38
	)	
vs.	)	DOCKET ENTRY
	)	AND ORDER
KNOX 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 3rd day of September, 2003. The hearing was held in the City of Lincoln, Lancaster County, Nebraska, pursuant to a Fifth Amended Notice of Hearing issued the June 10, 2003. Commissioners Hans, Lore, Wickersham, and Reynolds heard the appeal. Commissioner Wickersham, Vice-Chair, presided at the hearing.

John W. DeCamp ("the Taxpayer") appeared personally at the hearing. The Knox County Board of Equalization ("the Board") appeared through John Thomas, the Knox County Attorney. The Commission made the Case File for this appeal a part of the record without objection 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). The Commission also afforded 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 commercial real property located in the City of Creighton, Knox County, Nebraska ("the subject property").
2. The Knox County Assessor ("the Assessor") proposed valuing the subject property in the amount of \$427,800 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 \$90,000. (E1).
4. The protest alleged that the value as determined by the Assessor exceeded actual or fair market value. (E1).
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 the September 4, 2002. The Board timely filed an Answer on September 11, 2002.
8. The Commission issued a Fifth Amended Order for Hearing and Notice of Hearing on June 10, 2003. The Notice set the matter for a hearing on the merits of the appeal for September 3, 2003.
9. The Board objected to the Commission's receipt of Exhibits 2, 8, 9, and 11. The Commission sustained the Board's objections.
10. The Taxpayer objected to the Commission's receipt of Exhibits 5, 6, and 7. The Board withdrew Exhibits 6 and 7. The Commission received Exhibit 5 over the Taxpayer's objection.
11. The Taxpayer withdrew his Motion to Strike without objection, based on the Board's withdrawal of Exhibits 6 and 7.
12. The Board filed the Taxpayer's protest on July 2, 2002. The filing deadline was June 30, 2002. Neb. Rev. Stat. §77-1510 (Cum. Supp. 2002). The Parties stipulated that pursuant to the "Mail Box" Rule, the Taxpayer's protest was timely filed. Neb. Rev. Stat. §49-1201 (Cum. Supp. 2002).

13. The Taxpayer alleged that the Board's determination of value violated the due process and equal protection clauses of the state and federal constitutions. The Taxpayer further alleged that the Board's determination of value violated the uniformity and proportionality clauses of the Nebraska constitution. (*Appeal Form*).

**B.**

**SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS**

1. The subject property is a tract of land legally described as Part of Lot 13, West 200 Feet, 1.07 acres, and Part of Lot 12, 1.84 acres, in Carlin's 3<sup>rd</sup> Addition, Block 1, City of Creighton, Knox County, Nebraska. (E1; E5:9).
2. The tract of land is improved with certain commercial improvements. The improvements, as of the assessment date, were used as a commercial coin-operated laundry, motel, ballroom/meeting room, living quarters, restaurant and bar.
3. The Taxpayer testified that the Assessor had a legally-defensible reason to value the subject property in the amount of \$427,800 as of the assessment date.
4. The Taxpayer further testified under oath that he had no evidence other than the June 29, 2002, purchase price in support of his allegations.

5. The Taxpayer adduced no evidence in support of his allegations concerning state and federal constitutional violations.
6. The Taxpayer adduced no evidence of value of the subject property as of the assessment date.

**III.  
CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the parties and the subject matter of this appeal. Neb. Rev. Stat. §77-1510 (Cum. Supp. 2002).
2. The Commission is required to affirm the decision of the Board unless evidence is adduced establishing that the action of the Board was incorrect and either unreasonable or arbitrary. *Neb. Rev. Stat. §77-5016(7) (Cum. Supp.2002, as amended by 2003 Neb. Laws, L.B. 291, §9)*.
3. 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).
4. The Taxpayer failed to adduce clear and convincing evidence that the decision of the Board was unreasonable or arbitrary.
5. The Commission must therefore affirm the Board's decision.

**IV.  
ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:**

1. That the order of the Knox 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 Part of Lot 13, West 200 Feet, 1.07 Acres, and Part of Lot 12, 1.84 acres, Carlin's 3<sup>rd</sup> Addition, Block 1, City of Creighton, Knox County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$ 8,240
Improvements	\$419,560
Total	\$427,800
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 Knox County Treasurer, and the Knox County Assessor, 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 3<sup>rd</sup> day of September, 2003. The same were approved and confirmed by Commissioners Lore and Reynolds, 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 4<sup>th</sup> day of September, 2003.

**SEAL**

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Wm. R. Wickersham, Vice-Chair