

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

BRYAN W. PETERSON TRUST,)	
)	
Appellant,)	CASE NO. 02C-47
)	
vs.)	DOCKET ENTRY
)	AND ORDER
VALLEY COUNTY BOARD OF)	REVERSING 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 11th day of September, 2003. The hearing was held in the City of Kearney, Buffalo County, Nebraska, pursuant to a Notice of Hearing issued June 13, 2003. Commissioners Hans, Lore, Wickersham, and Reynolds heard the appeal. Commissioner Reynolds, Chair, presided at the hearing.

The Bryan W. Peterson Trust ("the Taxpayer") appeared through the Trustee of the Trust, Bryan W. Peterson, at the hearing before the Commission. The Valley County Board of Equalization ("the Board") appeared through Curtis Sikyta, the Valley 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 Ord, Valley County, Nebraska ("the subject property").
2. The Valley County Assessor ("the Assessor") proposed valuing the subject property in the amount of \$30,040 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 \$6,000. (E1).
4. The protest alleged that the proposed value exceeded actual or fair market value. (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 \$15,000. (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 9, 2002. The Board timely filed an Answer on September 16, 2002.
8. 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 11, 2003.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The subject property is a tract of land approximately 7,375 square feet in size, legally described as Lot 1, Block 19, Milfords Addition, City of Ord, Valley County, Nebraska. (E15:3). The property is improved with a two-story, single-family residence built in 1912. The residence was converted to a five-unit apartment building many years ago. (E14:2).
2. The improvements are of "Average Quality" of construction and "Fair Plus Condition." (E14:2).
3. The Taxpayer adduced the protest form and a written statement as its only exhibits for the hearing before the

Commission. (E1; E2). The statement alleges that another single-family residence which was converted to apartment use is comparable to the subject property. This property is also located in the City of Ord.

4. The Taxpayer failed to adduce the Property Record Card for this "comparable" property as required by the Commission's Order for Hearing and by the Commission's Rules and Regulations.
5. The Board adduced a copy of the Property Record Card for the Taxpayer's "comparable" property. (E16).
6. This property had an assessed value of \$15,000 as of the assessment date. (E16:1). The Taxpayer alleges that the purchase price of this property (\$6,500) paid on July 11, 2000 establishes the actual or fair market value of the subject property. (E2; E17:2).
7. The Taxpayer's evidence included testimony that almost no reinvestment had been made in the property since the trustee acquired the property in the mid-1980's upon his father's death. The Taxpayer has re-shingled the roof in 2001, and had painted the inside and outside of the property since the mid-1980's. The Taxpayer has made no efforts to rent any of the four units. The Taxpayer rents one unit for \$150 per month, which includes gas and water, and the use of a garage. The rent has not been changed in many years.

8. The property has substantial deferred maintenance. This substantial deferred maintenance is the direct result of the Taxpayer's management decisions.
9. The Assessor used the Cost Approach to value the subject property for tax year 2002. (E15:3; E15:1). The Assessor attributed no functional obsolescence to account for the fact that the improvements were designed as a single-family residence but converted to multi-family use.
10. No one from the Assessor's Office has inspected the subject property since 1987.
11. The Board adduced Property Record Cards for the subject property and for the Taxpayer's comparable (Bredthauer) property. The Property Record Cards provided did not reflect changes which the Assessor knew were made to the respective properties prior to the assessment date. Those changes appear not to have been reflected in the Assessor's determination of value.

**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 Board was unreasonable or arbitrary. Neb.

Rev. Stat. §77-5016(7) (Cum. Supp.2002, as amended by 2003 Neb. Laws, L.B. 291, §9).

3. In an appeal to the county board of equalization or to the Tax Equalization and Review Commission 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 the subject 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. Where the county assessor does not act upon his own information, or does not make a personal inspection of the property, the statutory presumption is extinguished. *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 580, 144 N.W.2d 161, 169 (1966).
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 Taxpayer has adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the Board.
7. The Board's decision must be vacated and reversed.

**IV.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the order of the Valley County Board of Equalization setting the assessed value of the subject property for tax year 2002 is vacated and reversed.
2. That the Taxpayer's multi-family real property legally described as Lot 1, Block 19, Milfords Addition, City of Ord, Valley County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$5,150
Improvements	\$1,350
Total	\$6,500
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 Valley County Treasurer, and the Valley 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 Lore made and entered the above and foregoing Findings and Orders in this appeal on the 11th day of September, 2003. The same were approved and confirmed by Commissioners Hans 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