

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

DAVID L. KALKWARF,	)	
	)	
Appellant,	)	CASE NO. 03R-120
	)	
vs.	)	
	)	
SALINE COUNTY BOARD OF	)	FINDINGS AND ORDER
EQUALIZATION,	)	
	)	
Appellee.	)	

Appearances:

For the Appellant: Bradley Kalkwarf, Esq.  
P.O. Box 905  
Wilber, NE 68465

For the Appellee: Tad Eickman, Esq.  
Saline County Attorney  
P.O. Box 713  
Wilber, NE 68465

Before: Commissioners Hans, Lore, Reynolds, and Wickersham.

**I.  
STATEMENT OF THE CASE**

David L. Kalkwarf ("the Taxpayer") owns a tract of land legally described as W ½ of Lot 5, and All of Lots 6 and 7, Wilber's Third Addition, City of Wilber, Saline County, Nebraska. (E8:1). The tract of land is improved with a single-family residence with 1,496 square feet of above-grade finished living area built in 1925. (E8:1). The Saline County Assessor ("the Assessor") determined that the actual or fair market value of the Taxpayer's real property was \$107,975 as of the January 1, 2003, assessment date. (E8:3). The Taxpayer timely filed a protest of that determination and Taxpayer alleged that the equalized value

of the property was \$75,000. (E1). The Saline County Board of Equalization ("the Board") granted the protest in part and found that the actual or fair market value of the property was \$101,710 as of the assessment date. (E8:1).

The Taxpayer filed an appeal of the Board's decision on August 21, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 10, 2003, which the Board answered on December 30, 2003. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on October 28, 2003. An Affidavit of Service in the Commission's records establishes that a copy of the Order and Notice was served on each of the Parties.

The Commission called the case for a hearing on the merits of the appeal in the City of Lincoln, Lancaster County, Nebraska, on January 27, 2003.

David L. Kalkwarf appeared personally at the hearing, and with counsel, Bradley Kalkwarf. The Saline County Board of Equalization appeared through Tad Eickman, the Saline County Attorney.

## **II. ISSUES**

The issues before the Commission are (1) whether the Board's decision was incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's value was reasonable.

**III.**  
**APPLICABLE LAW**

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the decision of the Board was incorrect and (2) that the decision of the Board was unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002)). The "unreasonable or arbitrary" element requires clear and convincing evidence that the Board either (1) failed to faithfully perform its official duties; or (2) failed to act upon sufficient competent evidence in making its decision. 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 v. Adams County Bd.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

**IV.**  
**FINDINGS OF FACT**

The Commission finds and determines that the Taxpayer adduced no evidence that the Board's value was the result of intentional discrimination systematically applied.

**V.**  
**ANALYSIS**

The Taxpayer alleges that the Boards' determination of value is not equalized with comparable properties. The Board called the Assessor as a witness. The Assessor took office in January, 2004. The Assessor was also unable to explain why the assessed value of one property which sold prior to the assessment date was not between 92% and 100% of actual or fair market value. (E10). The Property Tax Administrator's *Reports*, states that based on 73 sales during a two-year period the median of the Assessment Sales Ratio in Wilber, as of January 1, 2003, was 98.08%. This is within the acceptable range set by statute. Neb. Rev. Stat. §77-5028(2003 Supp.).

The Taxpayer bears the burden of demonstrating by clear and convincing evidence that the value of the subject property was not equalized with comparable properties. Although the record demonstrates cause for serious concern with the Assessor's records, the Taxpayer has failed to establish that the value determined for his property was the result of and intentional discrimination systematically applied. *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984). The Board's value must therefore be affirmed.

**VI.**  
**CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the Parties and over 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).
3. The Board is presumed to have faithfully performed its official duties in determining the actual or fair market value of the property. The Board is also presumed to have acted upon sufficient competent evidence to justify its decision. These presumptions remain until the Taxpayer presents competent evidence to the contrary. If the presumption is extinguished 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 on the Taxpayer. *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).
4. The taxpayer, in an equalization proceeding, must demonstrate by clear and convincing evidence that his value was the result of and intentional discrimination systematically applied. *Kearney Convention Center v.*

*Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984).

5. The Taxpayer has failed to meet his burden of proof. The Board's value must therefore be affirmed.

**VII.  
ORDER**

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

1. The order of the Saline County Board of Equalization setting the assessed value of the subject properties for tax year 2003 is affirmed.
2. The Taxpayer's real property legally described as W ½ of Lot 5, and All of Lots 6 & 7, Wilber's 3<sup>rd</sup> Addition, City of Wilber, Saline County, Nebraska, more commonly known as 623 West Hickory, shall be valued as follows for tax year 2003:

Land	\$ 5,010
Improvements	\$96,700
Total	\$101,710
3. Any request for relief by any Party not specifically granted by this order is denied.
4. This decision, if no appeal is filed, shall be certified to the Saline County Treasurer, and the Saline County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (2003 Supp.).
5. This decision shall only be applicable to tax year 2003.

6. 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 27<sup>th</sup> day of January, 2004. The same were approved and confirmed by Commissioners Wickersham and Lore and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (2003 Supp.).

Signed and sealed this 27<sup>th</sup> day of January, 2004.

**SEAL**

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*Wm. R. Wickersham, Chair*