

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

HARRIS W. SNYDER and IRIS C. SNYDER,)	
)	
Appellants,)	CASE NO. 02C-8
)	
vs.)	FINDINGS AND ORDERS
)	
DAWES COUNTY BOARD OF EQUALIZATION,)	
)	
Appellee.)	

Filed July 3, 2003

Appearances:

For the Appellant: Harris W. Snyder
P.O. Box 111
Crawford, NE 69339

For the Appellee: Dennis D. King, Esq.
Smith, King & Freudenberg, P.C.
P.O. Box 302
Gordon, NE 69343

Before: Commissioners Lore and Reynolds.

Reynolds, Chairman, for the Commission.

SUMMARY OF DECISION

The Commission affirms the decision of the Dawes County Board of Equalization which denied Taxpayers' protest, and denies Taxpayers' request for a reduction in the assessed value of the subject property.

NATURE OF THE CASE

Harris W. Snyder and Iris C. Snyder ("the Taxpayers") own certain commercial real property located in the City of Crawford, Dawes County, Nebraska. Taxpayers filed a protest with the Dawes County Board of Equalization ("the Board") alleging that the property was overvalued. By way of relief, the Taxpayers requested that the proposed 2002 valuation be reduced from \$14,835 to \$7,980. The Board denied the protest, from which decision the Taxpayers appeal.

I. EVIDENCE BEFORE THE COMMISSION

The Commission took notice of the Case File for this appeal as authorized by Neb. Rev. Stat. §77-5016(5) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9) without objection. The Commission also received Exhibits 1 through 19. The Commission overruled objections concerning the receipt of Exhibits 3 through 5 and 10 through 12. The Commission also heard and considered the testimony of the witnesses and the arguments offered by the Parties.

II. ISSUES BEFORE THE COMMISSION

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

jurisdiction is limited to those questions raised before the County Board of Equalization and to those issues sufficiently related in content and context to be deemed the same question at both levels. *Arcadian Fertilizer v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 505, 583 N.W.2d 353, 357 (1998). The issues before the Commission are, therefore, the Taxpayers' allegations that the value as determined by the Board exceeded actual or fair market value.

III. 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 Taxpayers, 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).

**IV.
FINDINGS OF FACT**

The Commission, in determining cases, is bound to consider only that evidence which has been made a part of the record before it. No other information or evidence may be considered. Neb. Rev. Stat. §77-5016(3) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9). The Commission may, however, evaluate the evidence presented utilizing its experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016(5) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9).

The Commission, from the pleadings and the evidence contained in the record before it, finds and determines as follows:

**A.
PROCEDURAL FINDINGS**

1. The Taxpayers are the owners of record of certain commercial real property located in the City of Crawford, Dawes County, Nebraska ("the subject property").
2. The Dawes County Assessor ("the Assessor") proposed valuing the subject property in the amount of \$14,835 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 \$7,980. (E1).
4. The protest alleged that the property was valued in excess of actual or fair market value. (E1).
5. The Board denied the protest. (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 August 9, 2002. The Board timely filed an Answer on August 23, 2002.
8. The Commission issued an Order for Hearing and Notice of Hearing on April 2, 2003. The Notice set the matter for a hearing on the merits of the appeal for June 26, 2003.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The subject property is a tract of land approximately 2,500 square feet in size which is legally described as Lot 7, Block 10, Original Town of Crawford, Dawes County, Nebraska. (E9:1 - 2). The tract of land is improved with a one-story, cinder block building set on a footing, which was built in

1979. There is no basement. The building is approximately 1,122 square feet in size. (E9:2).

2. The building is rented to a tenant for use as a flower shop. The tenant pays \$200 per month for rent, and is responsible for all utilities. The Taxpayers are responsible for the real estate taxes and for all maintenance and repairs.
3. The property which is the subject of Exhibit 2 sold on April 22, 2002, for \$7,500. (E2). The Taxpayer failed to adduce the Property Record File for the subject property. The Board, however, adduced the Property Record File for this property, which sold again on September 16, 2002, this time for \$11,000. (E17:1). Two-thirds of the property is used as a retail store, and one-third of the building is rented out as an apartment. (E17:5). The 2002 assessed value of the subject property is \$14,400. (E17:1).
4. The property which is the subject of Exhibit 3 sold on April 30, 2002 for \$5,000. (E3:1). The Taxpayer failed to adduce the Property Record File for this property. There is no evidence in the record establishing the elements of comparability.
5. The property which is the subject of Exhibit 4 sold on January 18, 1999, for \$1,000. (E4:1). The property is a vacant tract of land which a community improvement group purchased for purposes of cleaning the lot. The Taxpayer

- alleges that this one sale establishes the actual or fair market value of the land component of the subject property.
6. The Assessor used the Income Approach to value the subject property. (E9:4 - 5).
 7. The Assessor utilized the sum of \$2,401 as the Potential Gross Income for the subject property. The Assessor allowed a vacancy and collection loss factor of 5%, an expense ratio of 20%, and a "loaded" capitalization rate of 12.3%. (E9:4).
 8. The Taxpayer testified the 20% expense ratio used by the Assessor was inadequate given economic conditions in the City of Crawford. The Taxpayer also testified that the capitalization rate used by the Assessor was too low given the economic conditions in the City of Crawford. The Taxpayer, however, adduced no evidence in support of this testimony.

**V.
ANALYSIS**

**A.
THE VALUE OF THE LAND COMPONENT**

The Taxpayers allege that the value as determined by the Board exceeds the actual or fair market value of the subject property. The Taxpayers, in support of this allegation, offered evidence concerning the sale of a tract of land legally described

as Lot 6, Block 10, Original Town of Crawford, Dawes County, Nebraska. (E4:1). The tract of land sold for \$1,000, or approximately \$.40 per square foot, on January 18, 1999. (E4:1).

The Board determined that the land component of the subject property had an actual or fair market value of \$3,625, or approximately \$1.45 per square foot, as of the assessment date. (E9:1). The Taxpayers allege that the sale of Lot 6, Block 10, which is immediately adjacent to the subject property at Lot 7, Block 10, demonstrates that the land component of the subject property was overvalued.

"Actual value" is defined as "the market value or fair market value of real property in the ordinary course of trade. It is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market or in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which it is capable of being used." *Title 350, Neb. Admin. Code, Chap. 10, §001.15 (03/01)*. (Title 350, the Rules and Regulations of the Department of Property Assessment and Taxation, was amended in July, 2002, and again in May, 2003. However, the March, 2001, edition was in effect at the time the Board acted on the Taxpayers protest.)

Lot 6 was sold to an individual who was acting on behalf of a group of residents who wanted to clean up the lot for purposes of community improvement. The record does not establish what, if any, impact this fact had on the selling price of the lot. The sale price of \$1,000 was accepted by the Personal Representative of the Estate which owned the property. The Personal Representative is not a resident of the State of Nebraska.

(E4:1). The sale took place on April 17, 2001, and the purchaser paid approximately \$.40 per square foot. There is no evidence in the record as to whether the out-of-state seller was knowledgeable of the real estate market in the City of Crawford, or of the uses to which the property might be put.

The Board, in support of its determination of value, adduced evidence concerning three sales of vacant lots in the City of Crawford. (E10; E11; E12).

The first sale occurred on May 11, 2000. (E10). The sale was to a non-resident, but a real estate agent was involved. (E10:1). The purchase price was \$10,000. (E10:1). Four lots with an area of approximately 10,450 square feet (E13) were sold for approximately \$1.04 per square foot. The lots are located on Main Street, while the subject property is located on Second Street. (E13).

The second sale occurred on May 14, 1997, almost four and a half years prior to the assessment date. (E11). The sale was

made through a real estate agent to a resident of the City of Crawford. (E11). Five lots in Block 30 of the City of Crawford were sold. (E13). The lots have an area of approximately 13,790 square feet, and sold for \$11,500, or approximately \$.83 per square foot. The lots are all located on Second Street, approximately 1½ blocks south of the subject property.

The third sale occurred on April 24, 2000. (E12). The sale was not made through a real estate agent, but was from a resident of Crawford to a resident of Crawford. (E12). The purchase price was \$13,500 for three lots in Block 21. (E12; E13). The lots are located ½ block south of the subject property. The land sold for \$1.80 per square foot.

The three sales offered by the Board in support of its determination of value range in price from \$.83 a square foot to \$1.80 a square foot. The Taxpayers allege that these sales are not representative of the actual or fair market value of the subject property since the subject property is a lot located in the middle of a block, and the sold properties all included corner lots. The Taxpayers, however, offered no evidence of the impact of the "corner lot" factor on sale prices. The Taxpayers have only offered evidence of one sale at a lower price per square foot.

The Nebraska Supreme Court has held:

“. . . a single sale may in some instances provide evidence of market value. We have recognized that in tax valuation cases, actual value is largely a matter of opinion and with a precise yardstick for determination with complete accuracy. A single sale should not be excluded merely because it is a single sale. Rather the fact that evidence of other sales is not presented goes to the weight of the evidence.”

Firethorn Inv. v. Lancaster Co. Bd. Of Equal., 261 Neb. 231, 241, 622 N.W.2d 605, 612 (2001) (Citations omitted). Here, the Taxpayers urge the Commission to find that the land component of the subject property is overvalued at \$1.45 per square foot when one comparable property sold for \$.40 per square foot.

Firethorn stands for the proposition that one sale *may in some instances* provide evidence of market value. Here, however, there are three other sales, the lowest of which is double that of the sale relied on by Taxpayers. And that sale was four and one-half years old as of the assessment date. The one sale offered by the Taxpayers does not rise to the level of clear and convincing evidence under the facts and circumstances of this appeal.

The Commission therefore, from the entire record before it, cannot conclude that Taxpayers' single sale of a vacant lot establishes the actual or fair market value of the land component of the subject property.

B.
THE VALUE OF THE IMPROVEMENT COMPONENT

I.
THE INCOME APPROACH

The Taxpayers also allege that both the land and improvement components of the subject property are overvalued as of the assessment date. The Assessor determined that the actual or fair market value of the subject property was \$14,385. (E9:1).

The Assessor reached this determination based on the Income Approach. (E9:4 - 5). The Income Approach is one of the professionally accepted mass appraisal methodologies recognized in statute. Neb. Rev. Stat. §77-112 (Cum. Supp. 2002, as amended by 2003 Neb. Laws L.B. 292, §4 and as amended by 2003 Neb. Laws, L.B. 295, §1).

The Income Approach defines value as the present worth of future benefits arising from the ownership of a property. The seven major steps in the income approach are as follows:

1. Estimate potential gross income from market data.
2. Estimate vacancy and collection loss and subtract it from gross income.
3. Add miscellaneous income to arrive at effective gross income.
4. Analyze and estimate operating expenses.
5. Subtract operating expenses from effective gross income to arrive at net operating income.

6. Select an appropriate capitalization method, technique, and rate.

7. Compute value by capitalizing the net operating income.

Property Assessment Valuation, 2nd Ed., International Association of Assessing Officers, 1996, p. 46.

The Assessor, in reaching her determination of value, utilized \$2,401 as the annual potential gross income. (E9:4). The Assessor also utilized a Vacancy and Collection Loss factor of 5%, an expense ratio of 20%, and a "loaded" capitalization rate of 12.3%. (E9:4).

The Board adduced the testimony of a Nebraska Registered Appraiser ("the Board's Appraiser) who testified that the factors used to value the subject property were drawn from the local market in Crawford, including information provided by the Taxpayer. The Board's Appraiser also testified that the Cost Approach and Sales Comparison Approach were also reviewed prior to determining the market value of the subject property.

Under professionally accepted mass appraisal methods, "the income and expenses that are proper and acceptable for income tax purposes are not the same as those that are appropriate for the income approach. Only the reasonable and typical expenses necessary to support and maintain the income-producing capacity of the property should be allowed." *Property Assessment*

Valuation, 2nd Ed., International Association of Assessing Officers, 1996, p. 204.

The Taxpayer did not provide records concerning actual expenses. He did, however, provide testimony which establishes that the actual income for the subject property is \$200 per month, or \$2,400 per year. His testimony indicates that the actual expenses associated with operation of the property total less than 20%.

The Taxpayer testified the 20% expense ratio used by the Assessor was inadequate given economic conditions in the City of Crawford. The Taxpayer also testified that the capitalization rate used by the Assessor was too low given the economic conditions in the City of Crawford. The Taxpayer, however, adduced no evidence in support of this testimony.

Using the Taxpayers' actual gross income, \$2,400, with a 20% expense ratio, and a "loaded" (i.e., includes real estate taxes) capitalization rate of 12.3%, the indicated value of the property is \$17,561. ($\$2,400 - 20\% = \$1,920 \div 12.3\% = \$15,609$).

The Taxpayers have failed to adduce clear and convincing evidence that the value indicated under the Income Approach is incorrect, unreasonable or arbitrary.

ii.

THE SALES COMPARISON APPROACH

The Taxpayers also contend that the sale of two properties establish that the value of the subject property as determined by the Board exceeded actual or fair market value. (E2; E3). The Taxpayers contend that these properties are comparable to the subject property.

"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.

The property which is the subject of Exhibit 2 sold on April 22, 2002, for \$5,000. (E2). The property has 1,272 square feet of gross building area (E2:3) and was built in approximately 1941. (E2:3). The price paid was approximately \$5.90 per square foot for both land and improvements. ($\$7,500 \div 1,272$ square feet = \$5.90 per square foot).

The Board adduced evidence establishing that this same property sold again on September 16, 2002, this time for \$11,000. (E17:1). Two-thirds of the property is used as a retail store, and one-third of the building is rented out as an apartment. (E17:5). The price paid for the second sale, which occurred within five months of the first sale, was \$8.65 per square foot. ($\$11,000 \div 1,272$ square feet = \$8.65 per square foot).

The 2002 assessed value of this property was \$14,400. (E17:2). This evidence establishes that based on both the sale in April of 2002, and the sale in September of 2002, the assessed value as determined for January 1, 2002, exceeded actual or fair market value for this property.

The Taxpayer also adduced evidence of another sale of commercial real property in the City of Crawford. (E3). This parcel sold on April 30, 2002, for \$5,000. (E3:1). The property sold to the real estate agent who handled the transactions shown on Exhibits 10 and 11. That real estate agent must be presumed to be a knowledgeable buyer. The Taxpayer, however, failed to adduce the Property Record File for this property as required by Paragraph 8 of the Commission's Order for Hearing and Notice of Hearing. The age, quality of construction, condition, and gross building area for the improvements are not included in the exhibits.

The Board also adduced evidence concerning the sales of other improved commercial properties in the City of Crawford. (E15; E16). The first property sold on February 14, 2002, for \$13,700. (E15). The property is located one block north of the subject property and one half-block east of the subject property. (E13). The property has a gross area of 952 square feet. (E15:3). The subject property has a gross area of 1,122 square feet. (E9:2). The property at Exhibit 15 was built in approximately 1910 (E15:4), and sold for \$14.39 per square foot for both land and improvements. (E15:1; E15:3).

The subject property was built in approximately 1980, and is assessed at \$13.22 per square foot for both land and improvements. (E9:1, E9:2).

The Board also adduced evidence of a sale which occurred on May 19, 1998, for \$24,500. (E16). This property has improvements with a gross building area of 1,815 square feet which were built in approximately 1947. (E16:2; E16:5). The property sold for approximately \$13.49 per square foot. (E16:1; E16:5).

The Nebraska Court of Appeals has noted the importance of utilizing truly comparable properties to establish market value under the Sales Comparison Approach. "Comparing assessed values of other properties with the subject property to determine actual value has the same inherent weakness as comparing sales of other

properties with the subject property. The properties must be truly comparable." *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998).

Assuming without deciding that all of the properties offered as comparables by the Parties are truly comparable to the subject property, the per square foot assessed value of the subject property is less than the price paid per square foot for the two properties offered as comparables by the Board and is more than the price paid per square foot for the two properties offered as comparables by the Taxpayers.

The evidence offered by the Taxpayers is not clear and convincing evidence concerning the assessed value of the subject property. The Commission from this record cannot conclude that the decision of the Board was incorrect, unreasonable or arbitrary.

**VI.
CONCLUSIONS OF LAW**

**A.
JURISDICTION**

Jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (Cum. Supp. 2002).

B.
STANDARD OF REVIEW

The Commission is required to affirm the decision of the County 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).

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).

C.
SUBSTANTIVE CONCLUSIONS OF LAW

The Commission, from the entire record before it, concludes as a matter of law that it has jurisdiction over both the parties and the subject matter of this appeal.

VIII.
ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That the decision of the Dawes County Board of Equalization which denied Taxpayers' protest is affirmed.
2. That Taxpayers' commercial real property legally described as Lot 7, Block 10, Original Town of Crawford, Dawes County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$ 3,625
Improvements	\$11,210
Total	\$14,835

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 Dawes County Treasurer, and the Dawes 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.

Dated this 3rd day of July, 2003.

Susan S. Lore, Commissioner

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Mark P. Reynolds, Chair