

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

VIRGINIA A. POKORSKI, ET AL.,)	
)	
Appellants,)	CASE NO. 02R-142
)	
vs.)	DOCKET ENTRY
)	AND ORDER
SHERMAN 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 10th 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.

Virginia A. Pokorski and others ("the Taxpayer") 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 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 residential real property located in the Village of Ashton, 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 \$8,545 for purposes of taxation as of January 1, 2002 ("the assessment date"). (E1).
3. Thereafter the Board on its own motion issued on August 6, 2002, increasing the assessed value of the subject property to \$13,220. (E1).
4. The Taxpayer timely filed a protest of this second proposed valuation and requested that the subject property be valued in the amount of \$8,545. (E1).

5. The protest alleged that the proposed value exceeded actual or fair market value. (E1).
6. The Board denied the protest. (E1).
7. Thereafter, the Taxpayer timely filed an appeal of the Board's decision to the Commission. (Appeal Form).
8. The Commission served a Notice in Lieu of Summons on the Board on October 18, 2002. The Board timely filed an Answer on October 23, 2002.
9. The Commission issued an Order for Hearing and Notice of Hearing on March 6, 2003. The Notice set the matter for a hearing on the merits of the appeal for June 10, 2003.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The subject property is a tract of land approximately 7,000 square feet in size. (E2:3). The tract of land is legally described as Lots 7, 8 and 9, Block 4, Original Town, Ashton, Sherman County, Nebraska.
2. The tract of land is improved with a single-family residence which was built in 1905. (E2:3). The residence is a bungalow-type home with 836 square feet of above-grade finished living area. (E2:4). The home is of "Fair" Quality of Construction and "Badly Worn" condition. (E2:3).
3. The Taxpayer acquired the property on October 10, 1999. (E2:1). The purchase price was \$8,700. (E2:1). The

property was purchased from a relative, however, the property was purchased at an auction. Notice of the auction for the sale of real and personal property was published, and, according to the Taxpayer, up to 200 people attended the auction. The Taxpayer testified that four people bid on the house. The two final bidders were both related to the person who had previously owned the property. The Taxpayer's grandparents had built the subject property, and there was sentimental attachment to that property.

4. The evidence establishes that the sale and purchase of the subject property was an arms-length transaction.
5. The Taxpayer is a Certified General Appraiser licensed by the State of Nebraska. He is employed by another Nebraska County as an appraiser. He has been employed in the field of mass appraisal and fee appraisal since 1994.
6. The Taxpayer testified that in his opinion the actual or fair market value of the subject property was \$8,700.
7. The Taxpayer testified that the sales prices for single-family residential property in the Village of Ashton had been dropping since the elementary school in Ashton had closed. This testimony was corroborated by a newly elected member of the Board.
8. The Taxpayer adduced as evidence copies of the statistical profiles for the residential class of property in Sherman

County for tax year 2002. (E4:5). This profile demonstrates that the median assessed value for residential real property in Ashton was 111.00%. (E4:5). The acceptable range for the median is 92% to 100%. Neb. Rev. Stat. §77-502(3)(Cum. Supp. 2002). The profile demonstrates that residential real property in the Village of Ashton is assessed in excess of actual or fair market value.

9. The Board adduced the testimony of the State Appraiser for Sherman County. The State Appraiser testified that the economic depreciation factor for the Village of Ashton was removed for tax year 2002. The State Appraiser further testified that due to a computer malfunction, the actual age and effective age and physical depreciation of each single-family residential property which was built in 1950 or earlier was incorrectly calculated. The State Appraiser testified that this erroneous calculation resulted in the value of residential properties being understated.
10. The State Appraiser acknowledged that, after the correction for the erroneous calculation, the median of the assessment to sales ratio increased to 111%. (E6:26).
11. The State Appraiser also testified that the subject property was "probably overvalued" but would not offer an opinion of value for the subject property as of the assessment date.

12. The only competent and credible evidence of value in the record is that of the Taxpayer.
13. The Taxpayer has adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the Board.
14. The Commission, based on the entire record before it, finds and determines that the actual or fair market value of the subject property as of the assessment date was \$8,700.
15. The assessed value of the subject property for tax year 2002 as determined by the Board is not supported by the evidence.
16. The Commission further finds that the decision of the Board was incorrect, unreasonable and arbitrary.
17. Therefore 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 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).

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).
7. "Evidence of sale price alone may not be sufficient to overcome the presumption that the board of equalization has valued the property correctly. But where, as in this case, the evidence discloses the circumstances surrounding the

sale and shows that it was an arm's length transaction between a seller who was not under compulsion to sell and a buyer who was not compelled to buy, it should receive strong consideration." *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982).

**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 Taxpayer's residential real property legally described as Lots 7, 8 and 9, Block 4, Original Town of Ashton, Sherman County, Nebraska, shall be valued in the amount of \$8,700 for tax year 2002.
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 the Sherman 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 10th day of June, 2003. The same were approved and confirmed by Commissioner 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 19th day of June, 2003.

Mark P. Reynolds, Chair