

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

DUANE L. WILKINSON and JOYCE	)	
E. WILKINSON,	)	
	)	CASE NO. 03R-80
Appellants,	)	
	)	
vs.	)	
	)	FINDINGS AND ORDER
PAWNEE COUNTY BOARD OF	)	
EQUALIZATION,	)	
	)	
Appellee.	)	

Appearances:

For the Appellant: Duane L. Wilkinson  
RR2, Box 8  
Burchard, NE 68323

For the Appellee: Victor Faesser  
Pawnee County Attorney  
P.O. Box 73  
Pawnee City, NE 68420

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

**I.  
STATEMENT OF THE CASE**

Duane L. Wilkinson and Joyce E. Wilkinson ("the Taxpayers") own a tract of land 153.29 acres of land legally described as NE ¼ EX TR & EX HWY, in Section 34, Township 3, Range 9, Pawnee County, Nebraska. (E26:21). The tract of land is improved with a house and outbuildings. (E26:2 - 3).

The Pawnee County Assessor ("the Assessor") determined the actual or fair market value of the property improvements was \$107,650 as of the January 1, 2003, assessment date. (E15:4).

The Taxpayers timely protested the Assessor's determination of value for the improvement component of the subject property. The Taxpayers alleged the proposed value exceeded actual or fair market value and also that the proposed value exceeded that of other comparable property. The Taxpayers therefore requested an assessed value of \$88,450. (E1). The Pawnee County Board of Equalization ("the Board") granted the protest in part by reducing the proposed value of the garage by \$500. (E1).

The Taxpayer filed an appeal of the Board's decision on August 18, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 9, 2003, which the Board answered on September 26, 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 23, 2004. Duane L. Wilkinson appeared personally at the hearing. The Pawnee County Board of Equalization appeared through Victor Faesser, Esq., the Pawnee 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:

1. The Taxpayer purchased the property for \$180,540 on September 12, 2000. The Taxpayer thereafter invested \$43,000 for structural and cosmetic repairs to the house.
2. The Taxpayer invested \$57,500 in acquiring and erecting the steel machine shed.

**V.  
ANALYSIS**

**A.  
ACTUAL OR FAIR MARKET VALUE OF THE TAXPAYERS' HOUSE**

The Taxpayers challenge the Board's determination of value for the Taxpayers' house [\$58,045 (E26:3)]. The Taxpayers' allege the actual or fair market value of the house was \$50,000 to \$55,000 as of the assessment date, and that the "equalized value" was \$25 per square foot, or \$34,400.

Real property may be valued using professionally accepted mass appraisal methods. Neb. Rev. Stat. §77-112 (Cum. Supp. 2002). There are three recognized methods: the Cost Approach; the Sales Comparison Approach; and the Income Capitalization Approach. Neb. Rev. Stat. §77-112. Value may be determined using only one of the recognized approaches. *Schmidt v. Thayer County Bd. of Equalization*, 10 Neb.App. 10, 18, 624 N.W.2d 63,

69 - 70 (2001). The Board's value relies on the Cost Approach.  
(E26:3).

The Cost has six steps:

"(1) Estimate the land (site) value as if vacant and available for development to its highest and best use; (2) Estimate the total cost new of the improvements as of the appraisal date, including direct costs, indirect costs, and entrepreneurial profit from market analysis; (3) Estimate the total amount of accrued depreciation attributable to physical deterioration, functional obsolescence, and external (economic) obsolescence; (4) Subtract the total amount of accrued depreciation from the total cost new of the primary improvements to arrive at the depreciated cost of improvements; (5) Estimate the total cost new of any accessory improvements and site improvements, then estimate and deduct all accrued depreciation from the total cost new of these improvements; (6) Add site value to the depreciated cost of the primary improvements, accessory improvements, and site improvements, to arrive at a value indication by the cost approach."

*Property Assessment Valuation, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, pp. 128 - 129.* An accurate determination of value under the Cost Approach requires an

accurate determination of the per square foot cost factors and proper recognition of accrued depreciation.

The Taxpayer purchased the property for \$180,540 on September 12, 2000. (E5). Thereafter the Taxpayer made the following improvements: replace three basement walls for \$12,000; replace 10 windows for \$3,000; brick the exterior for \$10,000; replace kitchen cabinets for \$3,000; replace 2 sinks for \$200; replace one toilet for \$100; install new carpeting and linoleum for \$5,000; the Taxpayers' labor, and that of their hired man and others was \$3,000 to \$4,000; new shingles for \$1,500; and the Taxpayers' labor, and that of their hired man and others for another \$1,500. These improvements total \$40,000. The Taxpayers also installed a new heat pump and furnace/air conditioning. The cost of these items do not appear in the record.

The Board valued the house at \$37.93 per square foot. The Taxpayers' opinion of actual or fair market value is \$50,000 to \$55,000, or \$36.34 per square foot. This difference is a difference of opinion.

**B.**  
**EQUALIZED VALUE OF THE TAXPAYERS' HOUSE**

The Taxpayers allege that the assessed value of the house must be equalized with the assessed values of comparable properties at \$25 per square foot, or \$34,400. The Taxpayers

adduced evidence of comparable properties which, in the Taxpayers' opinion, support the request for equalization.

"Comparable properties" share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation*, 2<sup>nd</sup> 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. *Id.* at 103. Most adjustments are for physical characteristics. *Id.* at p. 105. "Financing terms, market conditions, location, and physical characteristics are items that must be considered when making adjustments . . ." *Id.* at p. 98.

The Board adduced the testimony of a Certified Residential Appraiser licensed by the State of Nebraska. The Board's Appraiser testified that the Taxpayers comparables were not truly comparable to the Taxpayers' house. When using comparables to establish value, the comparables 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).

The Taxpayers' evidence does not rise to the level of clear and convincing evidence establishing that the Board's value exceeds actual or fair market value.

**C.**

**ACTUAL OR FAIR MARKET VALUE OF THE TAXPAYERS' MACHINE SHED**

The Taxpayers also challenge the Board's determination of value for the Taxpayers' steel utility building [\$45,750 (E2:4)]. The Taxpayers' purchased a Behlen steel machine shed for %50,000 in 2002. The machine shed is 70 feet by 120 feet in size and has an area of 8,400 square feet. (E26:3). The shed is unheated, but part of it is insulated. There are two overhead doors, one 24-feet wide, and one 20-feet wide. An area of the floor 30 feet by 70 feet in size is poured concrete which cost \$5,000, while the rest of the floor is dirt. The Taxpayers also paid for electrical service to the shed at a cost \$2,500. The actual cost of construction of this steel machine shed is \$6.85 per square foot. The assessed value is \$5.45 per square foot.

The Taxpayers' evidence does not rise to the level of clear and convincing evidence establishing that the Board's value exceeds actual or fair market value.

**D.**

**CONCLUSION**

The Board's Appraiser did not offer an opinion of value. The Board's Appraiser did testify that the Taxpayers' comparables were not comparable to the subject property. The Board's Appraiser also testified that he could not explain the Assessor's value. There is no evidence establishing that the Assessor

inspected the property. There is no evidence explaining the Assessor's methodology, particularly with reference to the physical age, effective age, calculation of physical depreciation, or calculation of functional or external depreciation. Failure to explain the Assessor's methodology extinguishes the statutory presumption. *Leech, Inc. v. Bd. Of Equal.*, 176 Neb. 841, 846, 127 N.W.2d 917, 921 (1964).

Although the Taxpayer has demonstrated by clear and convincing evidence that the Board's decision was incorrect, there is no evidence that the Board's value was unreasonable.

The Taxpayer in an equalization proceeding must compare the assessed value assigned to the subject property as compared to the assessed value of comparable properties. The Board's Appraiser testified that he had inspected the subject property in 2001 and had also inspected six of the Taxpayer's seven residential comparables. The Board's Appraiser testified that none of the Taxpayers' residential comparables were truly comparable to the subject property. The Taxpayer did not refute this evidence. The Commission must conclude from this record that the Taxpayers' residential comparables are not truly comparable to the Taxpayers' house. The Commission must also note that two of the Taxpayers' comparables are located in Gage County. Equalization across county lines (Pawnee to Gage County) cannot be made in this type of proceeding. The Commission

determines that the Taxpayer failed to establish by clear and convincing evidence that the residential comparables are truly comparable to the Taxpayer's house. The Commission must also conclude that the Taxpayers' steel shed comparables are not truly comparable to the Taxpayers' steel shed.

The Taxpayer has therefore failed to establish by clear and convincing evidence that the house or steel machine shed were was not equalized with other comparable properties in Pawnee County.

#### **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 Commission has provided the Parties with reasonable notice of the day and time of hearing as required by Neb. Rev. Stat. §77-5015(2003 Supp.). The Commission afforded each of the Parties the opportunity to present evidence and argument as required by Neb. Rev. Stat. §77-5015(2003 Supp.). The Commission also afforded each of the Parties the opportunity to cross-examine witnesses for the opposing Party as required by Neb. Rev. Stat. §77-5016(4) (2003 Supp.).
5. "Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that no one part is compelled to pay a disproportionate share of the tax . . . the burden is on the taxpayer to show by clear and convincing evidence that the valuation placed upon the taxpayer's property when compared with valuation placed on other similar property is grossly excessive."

*Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).

6. Where "the discrepancy was not the result of an error of judgment but was a deliberate and intentional discrimination systematically applied" the Taxpayer's right to relief is clear. "The right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law." *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984).
7. "Where a county assessor has not acted on his own information, and where it is arbitrarily determined without explanation of the methods used or the elements considered, there is no presumption that the valuation is correct, and such a valuation is not supported by competent evidence and is legally erroneous." *Leech, Inc. v. Bd. Of Equal.*, 176 Neb. 841, 846, 127 N.W.2d 917, 921 (1964).

8. The Taxpayer has demonstrated by clear and convincing evidence that the Board's decision was incorrect.
9. The Taxpayer has however failed to demonstrate by clear and convincing evidence that the Board's value was unreasonable.
10. The Board's decisions must be affirmed.

**VII.  
ORDER**

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

1. The order of the Pawnee 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 the NE $\frac{1}{4}$  EX TR & EX HWY, consisting of 153.29 acres, in Section 36, Township 3, Range 9, Pawnee County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$108,845
Improvements	\$107,150
Total	\$215,995
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 Pawnee County Treasurer, and the Pawnee 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 23<sup>rd</sup> day of January, 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) (2003 Supp.).

Signed and sealed this 26<sup>th</sup> day of January, 2004.

**SEAL**

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*Wm. R. Wickersham, Chair*