

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

ANNEMARIE PETER)	
)	
Appellant,)	CASE NO. 02R-104
)	
vs.)	FINDINGS AND ORDER AFFIRMING
)	THE DECISION OF THE CASS
CASS COUNTY BOARD OF)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Annemarie Peter to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Tax Equalization and Review Commission's Hearing Room on the sixth floor of the State Office Building in the City of Lincoln, Lancaster County, Nebraska, on March 12, 2003, pursuant to a Notice and Order for Hearing issued December 17, 2002. Commissioners Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Annemarie Peter ("the Taxpayer") appeared at the hearing. The Cass County Board of Equalization ("the County Board") appeared through counsel, Nathan B. Cox, Esq., the County Attorney for Cass County Nebraska. The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. 77-5018 (Cum. Supp. 2002) to state its final decision concerning an appeal, with findings of fact and law, on the record or in writing. The final decision and order in this case follows.

I.
STANDARD OF REVIEW

The Taxpayer, in order to prevail, is required to demonstrate by clear and convincing evidence that the decision of the County Board was incorrect and arbitrary or unreasonable. Neb. Rev. Stat. § 77-5016(7) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291 § 9). The presumption created by the statute can be overcome if the appellant shows by clear and convincing evidence that the County Board either failed to faithfully perform its official duties or that the County 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). It is the Taxpayer's burden to overcome the presumption with clear and convincing evidence of more than a difference of opinion. *Garvey Elevators v. Adams County Bd.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

II.
FINDINGS

The Commission finds and determines that:

A.
PROCEDURAL FINDINGS

1. The Taxpayer is the owner of record of certain residential real property described in the appeal as North Lake Lot 113 leasehold and improvements, Cass County, Nebraska ("the subject property").

2. The actual or fair market value as of January 1, 2002, ("the assessment date") placed on the assessment roll for the subject property by the Cass County Assessor was:

Land (leasehold) value	\$ 7,503.00
Improvement value	<u>\$199,518.00</u>
Total value	<u>\$207,021.00.</u>

3. The Taxpayer timely protested that value to the Cass County Board of Equalization. The Taxpayer proposed the following value:

Land (leasehold) value	\$ -0-
Improvement value	<u>\$135,000.00</u>
Total value	<u>\$135,000.00.</u>

4. The County Board determined that the actual or fair market value of the subject property as of the assessment date was:

Land (leasehold) value	\$ 21,000.00
Improvement value	<u>\$186,021.00</u>
Total value	<u>\$207,021.00.</u> (E:1)

5. The Taxpayer timely filed an appeal of that decision to the Commission.
6. The County Board was served with a Notice in Lieu of Summons, and duly answered that Notice.
7. A Notice and Order for Hearing was issued on December 17, 2002, which set a hearing of the Taxpayer's appeal for March 12, 2003, at 8:30 A.M. CST.

8. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Notice and Order for Hearing was served on all parties.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. That the subject property, North Lake Lot 113, leasehold and improvements, Cass County, Nebraska, is owned by the Taxpayer.
2. The subject property is a leasehold interest and improvements which are a two-story single family residence, a detached garage, boat dock, and a concrete slab on the leasehold. (E3:1-4).
3. The Taxpayer's son testified that the lease is a long term lease with terms and conditions as set forth in Exhibit 12, excepting parties and lot description.
4. The lease is for an original term of 50 years terminating December 31, 2033, and is assignable. (E12).
5. The Taxpayer's son testified that the basis for the value (\$135,000.00) proposed in the Taxpayers protest to the Cass County Board was provisions of law governing homestead exemptions.
6. The Taxpayer's son testified that the highest value which could be assigned to the subject property allowing the

Taxpayer to be eligible for a homestead exemption was \$135,000.00.

7. The Taxpayer's son testified concerning the market for residences at North Lake and Middle Lake.
8. The Taxpayer did not testify.
9. A Form 402 was received into evidence establishing that improvements on the leasehold should be taxed to the tenant pursuant to *Neb. Rev. Stat. 77-1376 (Cum. Supp. 2002)*. (E20).
10. The Taxpayer did not assert that the value as determined by the County Board or the County Assessor for the subject property was not equalized with the values for other property.
11. The issue before the Commission is the actual or fair market value of the subject property as of the assessment date.
12. That the Taxpayer has not adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the County Board.
13. The actual or fair market value of the subject property as of the assessment date determined by the County Board is supported by the evidence.
14. The decision of the County Board was correct and neither arbitrary nor unreasonable.
15. The decision of the County Board should be affirmed.

**III.
CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.
2. The Taxpayer must adduce evidence establishing that the action of the County Board was incorrect and 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. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion.
Phelps Cty. Bd. of Equal. v. Graf, 258 Neb 810, 606 N.W.2d 736 (2000).
4. The term "unreasonable" can be applied to a decision of an administrative agency only if the evidence presented leaves no room for differences of opinion among reasonable minds.
Pittman v. Sarpy Cty. Bd. of Equal., 258 Neb 390, 603 N.W.2d 447 (1999).
5. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved."
Castellano v. Bitkower, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).
6. 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).

7. Appeals from a county board of equalization to the Commission are controlled by Neb. Rev. Stat. § 77-5016(7) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291 § 9), which provides, in pertinent part, that in such appeals, the Commission "shall hear ... and determine de novo all questions raised before the county board of equalization ... which relate to the liability of the property to assessment, or the amount thereof." The Courts have determined that similar language "restricts a taxpayer's appeal to a consideration of questions raised before the board of equalization" *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 504, 583 N.W.2d 353, 356 (1998).

IV. ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the order of the Cass County Board of Equalization determining the actual or fair market value of the subject property as of the assessment date, January 1, 2002, is affirmed as follows:

Land (leasehold) value	\$ 21,000.00
Improvement value	<u>\$186,021.00</u>
Total value	<u>\$207,021.00</u>

2. That this decision, if no appeal is timely filed, shall be certified to the Cass County Treasurer, and the Cass County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Cum. Supp 2002).
3. That any other request for relief by any party is denied.
4. That each party is to bear their own costs in this matter.
5. That this decision shall only be applicable to tax year 2002.
6. This order is effective for purposes of appeal July 9, 2003.

IT IS SO ORDERED.

Dated: July 9, 2003.

Wm R. Wickersham, Vice-Chair

Susan S. Lore, Commissioner

Robert L. Hans, Commissioner

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