

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

ROBERT F. ELLSWORTH,	)	
	)	
Appellant,	)	CASE NO. 02R-71
	)	
vs.	)	FINDINGS AND ORDER
	)	REVERSING THE DECISION OF THE
CASS COUNTY BOARD OF	)	CASS COUNTY BOARD OF
EQUALIZATION,	)	EQUALIZATION
	)	
Appellee.	)	

The above-captioned case was called for a hearing on the merits of an appeal by Robert F. Ellsworth 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 February 26, 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.

Robert F. Ellsworth ("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 conclusions of law, on the

record or in writing. The final decision and order in this case is as follows.

**I.  
STANDARD OF REVIEW**

The appellant, 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 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 of Equalization either failed to faithfully perform its official duties or that the County Board of Equalization 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 appellant'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 improvements on certain residential real property described in the appeal as North Lake Lot 44, Cass County, Nebraska ("the subject property"), and is the holder of a leasehold interest in Lot 44 North Lake, Cass County Nebraska.

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	\$ 60,264.00
Improvement value	<u>\$ 86,602.00</u>
Total value	<u>\$146,866.00.</u>

3. The Taxpayer timely protested that value to the Cass County Board of Equalization asserting that his leasehold interest in Lot 44 was not subject to tax and that a shed should have been removed. The Taxpayer proposed the following value:

Land (leasehold) value	\$ -0-
Improvement value	<u>\$86,550.00</u>
Total value	<u>\$86,550.00.</u> (E:1)

4. The Taxpayer testified that at the hearing before the Cass County Board he raised additional issues including equalization of the assessed or taxable value of his interest in Lot 44 with the assessed or taxable values of other North Lake Lots.

5. The Cass County Board of Equalization granted relief in part and 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>\$125,814.00</u>	
Total value	<u>\$146,814.00.</u>	(E:1)

6. The Taxpayer timely filed an appeal of that decision to the Commission.
7. The Cass County Board of Equalization was served with a Notice in Lieu of Summons, and duly answered that Notice.
7. A Notice and Order for Hearing issued on December 17, 2002, set a hearing of the Taxpayer's appeal for February 26, 2003, at 3:00 P.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. The subject property is a leased lot on which the improvements are owned by the Taxpayer.
2. A leased fee interest is the lessor's or landlord's interest. *The Appraisal of Real Estate*, 12<sup>th</sup> edition, The Appraisal Institute, (2001), p. 81.

3. "The valuation of a leased fee interest is best accomplished using the income capitalization approach.... The benefits that accrue to an owner of a leased fee estate generally consist of income throughout the lease and the reversion at the end of the lease." *Id.* p. 81 and 82.
4. A leasehold estate is the lessee's or tenant's estate. *Id.* 83.
5. "A leasehold interest may have value if contract rent is less than market rent, creating a rental advantage for the tenant." *Id.* p. 83.
6. "In mass appraisal, property is usually valued on an unencumbered fee simple basis, with appraised values for income properties based on market rents." *Mass Appraisal of Real Property*, Robert J. Gloudenmans, International Association of Assessing Officers, (1999), p. 260.
7. "Existing leases written at rates favorable to the owner command value and can be expected to increase sales prices, provided that tenants can sustain the payments. Leases written at below-market rates reduce value and usually result in lower sales prices." *Id.* p. 260.
8. "Sales prices for properties with assumed leases at nonmarket rents should be adjusted to a market basis. ... The amount of the adjustment for an assumed lease is

calculated by capitalizing the difference between the market and contract rents." *Id.* p. 260 and 261.

9. Real property is defined as "(1) All land; (2) All buildings, fixtures, and improvements; (3) Mobile homes, cabin trailers, and similar property, not registered for highway use, which are used, or designed to be used for residential, office, commercial, agricultural, or similar purposes, but not including mobile homes, cabin trailers, and similar property when unoccupied and held for sale by persons engaged in the business of selling such property when such property is at the location of the business; (4) Mines, minerals, quarries, mineral springs and wells, oil and gas wells, overriding royalty interests, and production payments with respect to oil and gas leases; and (5) All privileges pertaining to real property described in subdivisions (1) through (4) of this section." Neb. Rev. Stat. § 77-103 (Cum. Supp. 2002).
10. Privileges pertaining to real property means "the right to sell, lease, use, give away, or enter and the right to refuse to do any of these. All rights may or may not be vested in one owner or interest holder." 350 Neb. Admin. Code, ch. 10, §001.01F (07/02).
11. The Taxpayer testified that his lease is for a 50-year term ending December 31, 2033, and that the terms and conditions

of the Taxpayer's lease are identical to those shown in Exhibit 6.

12. The leasehold interest described in Exhibit 6 provides that: The lease terminates December 31, 2033; Base rent of \$850.00 is to be adjusted periodically; Real estate taxes will be paid by the lessor up to \$11,000.00 aggregate for all lots at North Lake; Lessee is responsible for other taxes including "personal property taxes" levied upon buildings and leasehold improvements; Lessee will pay a utility use fee on a pro rata basis with other leaseholders; Use of a lake subject to restrictions; Lessee grants a right of first refusal to lessor, in the event of a proposed sale of improvements; The leasehold interest is assignable subject to a right of first refusal and consent of the lessor which will not be unreasonably withheld; and a right to remove improvements at termination except those which are part of the land. (E6:3-22)
13. The Taxpayer testified that lots at North Lake are generally similar in size, all have access to the lake and equal rights to use the lake. The Taxpayer also testified that with few exceptions, for multiple or large lots, that the rent for all leases was identical.
14. The values placed on leasehold interests at North Lake by the Assessor for tax year 2002 is shown in Exhibit 8. The

values shown range from \$3,616 for Lot 58 to \$86,080.00 for Lot 26.

15. Leasehold values as determined by the Assessor are either:  
1) the difference between a previously determined combined value for lots and improvements based on sales in an appraisal for the assessment year 2000 and the depreciated value of improvements; or 2) an average of values assigned to leaseholds as calculated by the first method. (E8:1)
16. Leasehold estates had not been valued separately by the Assessor prior to the tax year 2002. (E8:1)
17. The Taxpayer testified that each leaseholder protesting the proposed value of a leasehold for the year 2002 had a value of \$21,000.00 assigned to the leasehold interest by the Cass County Board of Equalization.
18. The County Board's action "equalized leasehold interest". (E1:3)
19. Exhibit 2 page 1 shows that in the Taxpayer's instance that the decrease in the leasehold interest for Lot 44 North Lake, \$39,264.00, ( $\$60,264.00 - \$21,000.00$ ) was added to the assessor's improvement value of \$83,988 to arrive at the County Board improvement value of \$123,252.00 ( $\$83,988 + \$39,264.00 = \$123,252.00$ ).
20. The result after County Board action was that the value of the leasehold (land) plus improvements remained at the level



determined by the Assessor, \$144,252.00 (\$21,000.00 + \$123,252.00). (E2:1).

21. The County Board reduced the value of outbuildings by \$52.00. (E2:1).
22. The Taxpayer testified that the value assigned by the Assessor to the leased fee interest for each lot at North Lake regardless of rents or size was \$3,500.00 for the tax year 2002.
23. The County Board is obligated by law to equalize values. Neb. Rev. Stat. § 77-1501 (Cum. Supp. 2002).
24. The County Board is authorized to adjust the value of undervalued property by giving notice of a proposed change in valuation to the owner prior to July 25 each year. Neb. Rev. Stat. § 77-1504 (Cum. Supp. 2002).
25. The actual or fair market value of a leased fee interest in 2002 for a lot at North Lake as established by a study for the County Board was \$14,000.00. (E66:2)
26. The assessed or taxable value of a leased fee interest in 2002 for a lot at North Lake was not adjusted by the County Board so that assessed or taxable value equaled the actual or fair market value of a leased fee interest. (E14).
27. The ratio of assessed or taxable value for each leased fee interest in North Lake for the tax year 2002 to its actual or fair market value was 25% ( $\$3,500.00 \div \$14,000.00 = .25$ ).

- 28. The equalized value subject to taxation for the Taxpayer's leasehold interest in Lot 44 North Lake and its improvements is 25% of actual or fair market value for the tax year 2002.
- 29. The Taxpayer has adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the County Board.
- 30. Based on the entire record before it, the Commission finds and determines that the actual or fair market value as of the assessment date for the subject property for the tax year 2002 is:

Land (leasehold) value	\$ 21,000.00
Improvement value	\$123,252.00
Outbuilding value	<u>\$ 2,562.00</u>
Total value	<u>\$146,814.00.</u>

- 30. A factor of 25% must be applied, however, to the actual or fair market value of the subject property to determine its assessed or taxable value because the assessed or taxable value of the leased fee in the subject property is 25% of its actual or fair market value.
- 31. The assessed or taxable value of the subject property as of the assessment date determined by the County Board is not supported by the evidence.
- 32. The equalized assessed or taxable value of the subject property, described as a leasehold interest in and

improvements on Lot 44, North Lake, subject to taxation for the tax year 2002 is

Land (leasehold) value	\$ 5,250.00
Improvement value	\$30,813.00
Outbuilding value	<u>\$ 641.00</u>
Total value	<u>\$36,704.00.</u>

33. The decision of the County Board was incorrect, arbitrary and unreasonable.
34. The decision of the County Board should be vacated and reversed.

**III.  
CONCLUSIONS OF LAW**

1. Subject matter jurisdiction of the Commission is over all issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Board of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353 (1998)
2. The Commission has jurisdiction over the parties and the subject matter of this appeal.
3. The Commission, while making a decision, may not consider testimony, records, documents or other evidence which is not a part of the hearing record. Neb. Rev. Stat. § 77-5016(3) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291 §9).

4. 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).
5. 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).

6. 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).
7. "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).
8. 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).

9. "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).
10. "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. Where it is impossible to secure both the standards of the true value of a property for taxation and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. However, 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).

11. 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).
12. Properly adopted rules and regulations have the force and effect of law. *Alexander v. J. D. Warehouse*, 253 Neb. 153, 568 N.W.2d 892 (1997).

13. If real property is subject to a long term lease the aggregate of the actual or fair market value of the leased fee interest and the actual or fair market value of the leasehold interest should not be less than the actual or fair market value of the fee interest. *Omaha Country Club v. Douglas County Board of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).

#### **IV. DISCUSSION**

The Taxpayer asserts that the Taxpayer's leasehold interest, terminating on December 31, 2033, in Lot 44 North Lake is not subject to taxation. There has been implicit recognition by the Courts of Nebraska that leasehold interests are a taxable interest. *North Platte Lodge 985, B.P.O.E. v. Board of Equalization of Lincoln County*, 125 Neb. 841, 242 N.W. 313 (1934). Statutes define real property as including all privileges pertaining to real property described as city and village lots and all other lands. Neb. Rev. Stat. § 77- 103(5) (Cum. Supp. 2002). Regulations of the Property Tax Administrator define a privilege pertaining to real property as "the right to sell, lease, use, give away, or enter and the right to refuse to do any of these." 350 Neb. Admin. Code, ch. 10, § 001.01F (07/02). It has also been recognized that the division of a fee interest into a leased fee and a long term leasehold



interest does not reduce the actual or fair market value of the fee interest. *Omaha County Club v. Douglas Country Board of Equalization*, 645 N.W.2d 821, 11 Neb.App. 171, (2002). The Courts have held that "the actual or fair market value of the real property can only be ascertained by first determining the fee simple value, including the value of the leasehold interest, the leased fee estate, and any other severed interest." *Id.* at 831, 12. Statutes dictate that "If improvements on leased land are to be assessed separately to the owner of the improvements, the actual value of the real property shall be determined without regard to the fact that the owner of the improvements is not the owner of the land upon which such improvements have been placed. (2) If the owner of the improvements claims that the value of his or her interest in the real property is reduced by uncertainty in the term of his or her tenancy or because of the prospective termination or expiration of the term, he or she shall serve notice of such claim in writing by certified mail on the owner of the land before January 1 and shall at the same time serve similar notice on the county assessor, together with his or her affidavit that he or she has served notice on the owner of the land. (3) If the county assessor finds, on the basis of the evidence submitted, that the claim is valid, he or she shall proceed to apportion the total value of the real property between the owner of the improvements and the owner of the land as their

respective interests appear." Neb. Rev. Stat. § 77-1375 (Cum. Supp. 2002). References in the section clearly call for separate consideration of the improvement values.

Other references refer to the value of real property which would include both improvements and land. The statutory definition of real property includes all buildings, fixtures and improvements. *Neb. Rev. Stat. § 77-103(2)* (Cum. Supp. 2002). "Improvements on leased land shall mean any item of real property defined in subdivisions (2) through (4) of section 77-103 which is located on land owned by a person other than the owner of the item." *Neb. Rev. Stat. § 77-117* (Cum. Supp. 2002). The reference to total value of the real property and its allocation between the owner of the land and the owner of the improvements can only be understood in the context of the total value of the owner and tenant interests in the land and improvement values divided between the two interest holders as their interests are determined. The statutes, regulations and prior decisions of the Courts of Nebraska require a determination that the leasehold interest of the Taxpayer in this case is taxable real property.

The remaining contention of the Taxpayer is that the value of the Taxpayer's leasehold interest has not been equalized with other leasehold interests. "Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. *Scribante v.*

*Douglas County Board of Equalization*, 588 N.W.2d 190, 8 Neb.App. 25 (1999). " *Cabela's Inc v. Cheyenne County Board of Equalization*, 597 N.W.2d, 635 Neb.App. 582, 597 (1999).

Prior to tax year 2002 the Assessor had not assigned a separate value to leasehold interests in lots at North Lake. (E8:1). Three approaches to the valuation of leasehold interests at North Lake were eventually used in Cass County for the tax year 2002. Two approaches were used by the Assessor to set initial values. A third approach was used by the County Board as it heard protests. The details of Assessor action and County Board action follow.

The Assessor determined values for leasehold interests in lots at North Lake for the year 2002 in two different ways. The first group of lots, consisting of those which were vacant, and those whose improvements had been valued using depreciated cost were valued based on the average difference between depreciated cost and a market analysis of lot values. (E8:1). Lots with improvements valued at depreciated cost were those with mobile homes, sheds or garages. (E8:1). Depreciated cost had been determined for all improvements on leased lots at North Lake as part of a reappraisal performed in 1999 and implemented in 2000. (E8:5 & 6). The value determined for the leasehold interest in a vacant lot or a lot with depreciated improvements was \$30,000.00.

All remaining leasehold interests in lots at North Lake were assigned a value which was the difference between the depreciated cost of improvements and market value for the tax year of 2000 of both the leasehold and improvements (updated for additional improvements). (E8:1). The range of values for leasehold interests at North Lake determined using the second method ranged from \$3,616.00 for Lot 58 to \$86,080.00 for Lot 26. (E8:2 & 3).

After determining values for the leasehold interests in all Lots at North Lake for the year 2002 using two different methods, the Assessor determined the aggregate value of leasehold interests and improvements for the year 2002 at North Lake in two different ways. The first method was to add a new component of value, land, assign a value of \$30,000.00 to that component, and add the prior year's improvement value. (E8:1). The result was a \$30,000.00 increase in value over the prior year. That method was used for vacant lots and lots whose improvements had been valued at depreciated cost. (E8:1). The second method for determining value involved several steps. The first step was to add a new component of value, "land" (leasehold interest), assign a value to it derived from subtraction of the depreciated cost of improvements from market value. Next the Assessor subtracted the value of the leasehold interest from the prior year's value for improvements. Outbuilding value was not adjusted. Finally the values of all components leasehold, improvements, and

outbuildings were added together for the aggregate or total value. The result for lots in the second group was no change from the prior year's aggregate value.

The value of the Taxpayer's leasehold interest in Lot 44 placed on the assessment rolls by the Assessor for tax year 2002 was \$60,264.00. (E2:1).

The County Board, as it considered protests of 2002 assessed values for leasehold interests, had available a land study of similar sandpit lake lot sales. (E6:1). The County Board used this study as the basis for a third method of valuation of leasehold interests at North Lake for the tax year 2002. The market value indicated for a fee interest in that study for lots at North Lake was \$35,000.00. (E6:1). The County Board utilized a rate of return of 10% to determine a "market rent" of \$3,500.00. (E6:2). The difference between "market rent", \$3,500.00, and the "actual rent", \$1,400.00, assumed to be due under the lease over the life of the lease was calculated. (E6:2). The difference between the rent paid and the calculated market rent was determined to be \$2,100.00. (E6:2). That amount was capitalized at 10% suggesting a leasehold value of \$21,000.00 for each lot. Other calculations were made suggesting different values, \$26,092.00 and \$32,541.00, for a leasehold interest. (E6:2). The indicated value for the leased fee, capitalizing actual rent of \$1,400.00 at 10% was \$14,000.00

(E6:2). The County Board assigned a leasehold value of \$21,000.00 to Lot 44 of North Lake for the year 2002. (E2:1). The sum of the leased fee and the leasehold at those values equaled the indicated actual or market value of a fee interest, \$35,000.00. (E6:2).

The Taxpayer testified that Assessor had valued each leased fee interest at \$3,500.00 for the tax year 2002.

After County Board action the total assessed or taxable value assigned to the leased fee (\$3,500.00) and the leasehold interest (\$21,000.00) for Lot 44 was \$24,500.00, while the indicated actual or fair market value of a fee interest for a lot at North Lake was \$35,000.00. The ratio of assessed or taxable value to actual or fair market value for the fee interest in Lot 44 was .70 ( $\$24,500.00 \div \$35,000.00$ ). The assessed or taxable value of the fee interest in Lot 58 however would have remained at \$7,115.00 (\$3,500.00 leased fee plus \$3,616.00 leasehold). (E8:3). The ratio of assessed or taxable value to actual or fair market value for Lot 58, is .2033 ( $\$7,116.00 \div \$35,000.00$ ). If Lot 26 is considered the assessed or taxable value of the fee interest would have been \$89,580.00 (\$86,080.00 leasehold plus \$3,500.00 leased fee). (E8:2) The ratio of assessed or taxable value to actual or fair market value for Lot 26 is 25.5943 ( $\$89,580.00 \div \$3,500.00$ ). The combined assessed or taxable values for leasehold and leased fee interests of North Lake lots were

clearly not equalized by County Board action when compared with the \$35,000.00 actual or fair market value of each Lot.

The aggregate value of the subject property was reduced by the County Board by \$52.00 the value of a shed that had been removed before the assessment date. (E1:3)

A uniform tax rate applied to uniform and proportionate values, however they are determined, insures that no taxpayer similarly situated, bears a disproportionate share of taxes. Achievement of that objective is the purpose of equalization. *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 588 N.W.2d 190 (1999). If aggregate values for leasehold and improvements were unchanged by board action it is necessary to determine whether values were equalized prior to Board action. "The burden is on the Taxpayer to show by clear and convincing evidence that the valuation placed on other similar property is grossly excessive." *Cabela's, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999). The actual or fair market value of a leased fee interest in a lot at North Lake was, by the County Board's evidence, \$14,000.00. (E6:2). The Taxpayer's unrefuted testimony was that assessed or taxable value of a leased fee interest for each lot at North Lake was \$3,500.00 in tax year 2002. The ratio of assessed or taxable value to actual or fair market value is 25% ( $\$3500.00 \div \$14,000.00$ ). The constitution requires that values be determined

proportionately even if the proportionate value is less than actual or fair market value. *Scribante, supra.* There is proof in this case that the proportion of actual or fair market value of a leased fee interest of a lot at North Lake to the assessed or taxable value of a leased fee of a lot at North Lake for the tax year 2002 was 25%. The Taxpayer is entitled to valuation of his interest in the subject property for purposes of taxation at the same level.

**IV.  
ORDER**

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

1. That the order of the Cass County Board of Equalization setting the assessed value of the subject property for the assessment date, January 1, 2002, is vacated and reversed.
2. That the equalized value of the subject property, described as a leasehold interest in and improvements on Lot 44, North Lake, subject to taxation for the tax year 2002 is 25% of actual or fair market value.
3. Actual or fair market value of the subject property for the tax year 2002 as of the assessment date of January 1, 2003 is \$146,814.00.
4. That the equalized assessed or taxable value of the subject property, described as a leasehold interest in and



improvements on Lot 44, North Lake, subject to taxation for the tax year 2002 shall be:

Land (leasehold) value	\$ 5,250.00
Improvement value	\$30,813.00
Outbuilding value	<u>\$ 641.00</u>
Total value	<u>\$36,704.00.</u>

5. 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).
6. That any request for relief, by any party, which is not specifically provided for by this order is denied.
7. That each party is to bear its own costs in this matter.
8. That this decision shall only be applicable to tax year 2002.
9. 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

**SEAL**

Robert L. Hans, Commissioner