

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

DONALD D. LANDON and BETTE I.)	
LANDON,)	
)	CASE NO. 03R-131
Appellants,)	
)	
vs.)	FINDINGS AND
)	FINAL ORDER
SHERMAN COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

Appearances:

For the Appellant: Bette I Landon
R.R. 1, Box 114
Arcadia, NE 68815

For the Appellee: No Appearances through Counsel

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

**I.
STATEMENT OF THE CASE**

Donald D. Landon and Bette I. Landon own a tract of land approximately 283 acres in size. The tract of land is legally described as Lots 2 & 3 and the N½ of Section 20, Township 16, Range 15, Sherman County, Nebraska. (E7:3). The tract of land is improved with a single-family residence which was built in 1973. The residence is a ranch-style home with 1,280 square feet of above-grade finished living area over a full basement. (E7:3). Less than one-half of the basement is finished, and that finish is a "partition finish." The home also has a two-car

attached garage, and a detached garage. (E7:3; E7:4). There are also a number of agricultural outbuildings. (E7:9).

Agricultural and horticultural real property is to be valued at 80% of actual or fair market value. Non-agricultural real property is to be valued at 100% of actual or fair market value. Neb. Rev. Stat. §77-201(Reissue 2003). The State Assessing Official for Sherman County determined that the assessed value of the Taxpayer's real property was \$231,615 as of the January 1, 2003, assessment date. (E1). The Taxpayer timely filed a protest of that determination and alleged that the assessed value of the property was \$185,360. (E1). The Sherman County Board of Equalization ("the Board") denied the protest. (E1).

The Taxpayer appealed the Board's decision on August 21, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 12, 2003, which the Board answered on September 17, 2003. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on April 6, 2004. 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 Kearney, Buffalo County, Nebraska, on June 28, 2004. Donald D. Landon and Bette I. Landon ("the Taxpayer") appeared personally at the hearing. Commissioners

Hans, Lore, Reynolds and Wickersham heard the appeal.

Commissioner Reynolds served as the presiding officer.

Special Appointed Counsel for the Sherman County Board of Equalization filed a Motion to Withdraw on June 24, 2003. Mr. Eldon Kieborz, Chair of Sherman County Board of Equalization, attended the hearing before the Commission. Special Appointed Counsel was given leave to withdraw as requested.

II. ISSUES

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayer's protest was incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determination of value was unreasonable.

III. APPLICABLE LAW

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the Board's decision was incorrect and (2) that the Board's decision was unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7)(Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51)). 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 Board's value 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 value of the land component of the subject property (\$133,200) is not at issue. (E6:2; E7:2).
2. The value of the outbuildings (\$15,360) is not at issue. (E1; E7:3 - 9).
3. The Board's records indicate a different value from that which appears on the Property Record File.
4. The owner's opinion of value is the only evidence of value in the record.

**V.
ANALYSIS**

The Taxpayer testified that in her opinion the actual or fair market value of the residential improvements (exclusive of land) was \$51,000 as of the assessment date. The subject property's improvements were valued using the Cost Approach. (E7:4). The Board's records establish a different value from

that which appears on the Property Record File. Where an assessed value 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).

The owner's opinion of value is the only evidence of value in the record. 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).

The owner's opinion of value is supported by the Board's evidence. Exhibit 8 concerns the sale of rural residential property. The property sold in 1999 for \$61,000. (E8:1). The 2003 assessed value is \$113,120. (E8:1). Isolating the residential improvements indicates a value for those improvements of \$44,950. ($\$61,000 - \text{land } \$9,515 - \text{Lump Sums } \$6,535 = \$44,950$ or \$44,950). This property was built in 1973, has 1,296 square feet of above-grade living area, while the subject property has 1,280 square feet of above-grade finished living area. The Board's comparable property has a per square foot value of \$34.68. The subject property's residential improvements based on a value of \$51,000 are \$39.84.

The Taxpayers have met their burden of proof. The Board's decision must be vacated and reversed.

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 Board's action was incorrect and either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).
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 Board's value 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. "Actual value" is defined as the market value of real property in the ordinary course of trade, or 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 buyer and willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. Neb. Rev. Stat. §77-112 (Reissue 2003).
5. Where an assessed value 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).
6. 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).
7. The Taxpayer adduced clear and convincing evidence that the Board's decision was incorrect and both unreasonable and arbitrary.
8. The Taxpayer adduced clear and convincing evidence that the Board's determination of value was unreasonable.

9. The Board's decision must be vacated and reversed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Sherman County Board of Equalization's Order setting the assessed value of the subject property for tax year 2003 is vacated and reversed.
2. The Taxpayer's real property legally described as N½ & Lots 2 & 3, Section 20, Township 16, Range 15, Sherman County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$133,200
House	\$ 51,000
Outbuildings	\$ 15,360
Total	\$199,560
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 Sherman County Treasurer, and the State Assessing Official for Sherman County, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).

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 28th day of June, 2004. The same were approved and confirmed by Commissioners Lore, Reynolds and Wickersham and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Reissue 2003).

Signed and sealed this 1st day of July, 2004.

SEAL

Wm. R. Wickersham, Chair