

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

DAVID J. KUSZAK,)	
)	
Appellant,)	CASE NO. 03R-33
)	
vs.)	
)	
SHERMAN COUNTY BOARD OF)	FINDINGS AND
EQUALIZATION,)	FINAL ORDER
)	
Appellee.)	

Appearances:

For the Appellant: David J. Kuszak
R.R. 2, Box 28
Ashton, NE 68817

For the Appellee: No appearances by counsel

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

**I.
STATEMENT OF THE CASE**

David J. Kuszak owns a 1.44 acre tract of land legally described as part of the NE $\frac{1}{4}$ of Section 33, Township 16, Range 13, Sherman County, Nebraska. (E25:1). The tract of land is improved with a single-family residence which was built in 2002. The residence is a one-story home with 2,278 square feet of above-grade finished living area over a full basement and an attached garage. (E25:1). Less than one-half of the basement is finished, and that finish is a "partition finish." (E25:3). The Taxpayer estimated his investment in the property at approximately \$170,000.

The State Assessing Official for Sherman County determined that the actual or fair market value of the Taxpayer's real property was \$174,525 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 \$131,976. (E1). The Sherman County Board of Equalization ("the Board") denied the protest. (E1).

The Taxpayer appealed the Board's decision on August 13, 2003. The Commission served a Notice in Lieu of Summons on the Board on August 26, 2003, which the Board answered on September 3, 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. 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 (\$4,330) is not at issue. (E1:1; E25:1).
2. The owner had no independent opinion of value.

**V.
ANALYSIS**

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 Taxpayer's evidence demonstrates that economic depreciation is specific to locales within Buffalo, Custard, Howard and Sherman Counties. Those economic depreciation factors ranged from 15% to 40%. The Taxpayer failed to adduce any evidence quantifying the appropriate economic depreciation factor applicable to the location of his property.

The Board's value is based on the Cost Approach. The Taxpayer testified that his cost to build the residential improvements approximated the costs estimated by the Board. Cost does not necessarily equal value. *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2D 631, 637, (1998). The Taxpayer adduced no evidence of comparable sales. The Taxpayer had no independent opinion of actual or fair market

value. The Taxpayer adduced no other evidence of actual or fair market value.

The Taxpayer failed to adduce any clear and convincing evidence establishing that the Board's decision was incorrect and either unreasonable or arbitrary. The Taxpayer has also failed to adduce evidence establishing the Board's valuation decision was unreasonable. The Taxpayer has failed to meet his burden of proof. The Board's decision must accordingly be affirmed.

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. 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 Taxpayer failed to adduce evidence that the Board's decision was incorrect and either unreasonable or arbitrary.
7. The Board's decision must accordingly be affirmed.

**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 affirmed.
2. The Taxpayer's real property legally described as Part of the NE¼ in Section 33, Township 16, Range 13, Sherman County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$ 4,330
House	\$170,195
Total	\$174,525
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 Lore 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 Hans, 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