

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

ROBERT G. HINRICHS,)	
)	
Appellant,)	CASE NO. 03R-57
)	
vs.)	
)	FINDINGS AND
CLAY COUNTY BOARD OF)	FINAL ORDER
EQUALIZATION,)	
)	
Appellee.)	

Appearances:

For the Appellant: Robert G. Hinrichs
200 North 2nd Street
Inland, NE 68954

For the Appellee: Ted S. Griess, Esq.
Clay County Attorney
P.O. Box 350
Sutton, NE 68979

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

**I.
STATEMENT OF THE CASE**

A "manufactured home" is defined as a factory-built house manufactured under the Federal Manufactured Home Construction and Standards Act of 1976. There are four types of manufactured homes: mobile homes; modular homes; panelized homes, and pre-cut homes. *Dictionary of Real Estate Appraisal*, 4th Ed., Appraisal Institute, 2002. See also Neb. Rev. Stat. §71-4603(1)(2002 Cum. Supp.). Robert G. Hinrichs ("the Taxpayer") owns a manufactured home located on leased land situated in the unincorporated town of Inland, Clay County, Nebraska. (E9:1). The manufactured home was manufactured by Schult in 1994. (E9:1). The Clay County

Assessor ("the Assessor") determined that the manufactured home is of "Good" Quality of Construction and "Good" Condition.

(E12:2). The manufactured home has 1,456 square feet of finished living area, two porches and "average" quality skirting.

(E12:2).

The Assessor determined that the actual or fair market value of the Taxpayer's manufactured home was \$36,035 as of the January 1, 2003, assessment date. (E12:2; E9:1). The Taxpayer timely filed a protest of that determination and alleged that the actual or fair market value of the property was \$22,242. (E1). The Clay County Board of Equalization ("the Board") granted the protest in part and found that the actual or fair market value of the manufactured home was \$31,580 as of the assessment date.

(E1; E9:1; E12:1).

The Taxpayer appealed the Board's decision on August 22, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 15, 2003, which the Board answered on October 2, 2003. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on April 9, 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 Lincoln, Lancaster County, Nebraska, on July 8, 2004. The Taxpayer appeared personally at the

hearing. The Board appeared through Ted S. Griess, Esq., the Clay County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Wickersham served as the presiding officer.

**II.
ISSUES**

The issues before the Commission are (1) whether the Board's decision to grant the Taxpayer's valuation protest only in part 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. There is no evidence that anyone from the Assessor's Office has ever inspected the interior of the subject property.
2. The Taxpayer's opinion of value for the subject property, between \$22,242 and \$23,576, is primarily based on the NADA On-Line Guide to Manufactured Home Values. (E2).
3. The Taxpayer's request for a 60% accrued depreciation factor for the subject property is only based on the Taxpayer's unsupported opinion.

**V.
ANALYSIS**

The Taxpayer alleges that (1) the assessed value of his manufactured home as determined by the Board exceeded actual or fair market value as shown by the NADA On-Line Guide to Manufactured Home Values; (2) the Board failed to attribute sufficient physical depreciation to the subject property; and (3) the Board's determination of value failed to properly consider the adverse impact of the property's location on actual or fair market value. (E1 and Testimony of Taxpayer).

There is no evidence that anyone from the Assessor's Office has ever inspected the interior of the subject property. This failure extinguishes the statutory presumption in favor of the Board. *Grainger Bros. co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 580, 144 N.W.2d 161, 169 (1966). The only issue before the Commission is whether the Board's determination of value was unreasonable.

The Taxpayer's only evidence of value is his opinion based on a value reported in an on-line edition of the NADA Guide to Manufactured Home Values. (E2:2). The Guide indicates a value of \$22,242 to \$23,576 for a Deluxe Home. (E2:2). The on-line edition of the NADA Guide required the Taxpayer to identify the manufactured home's manufacturer, trade or model name, the state where the manufactured home is located, the year built, and the width and length of the manufactured home. (E2:1). The on-line edition, after requiring this information for "demographic purposes," states the manufacturers name and model information has no impact on the indication of value. (E2:1). The Board's evidence, received without objection, establishes that manufacturer produced homes made by different manufacturers have different qualities of construction. (E11). The NADA Guide also provided an indication of value which is only limited to the State of Nebraska. The indicated value purports to be the same for any manufactured home of any deluxe model built in 1994,

located anywhere in the State of Nebraska, which has dimensions of 28 feet by 52 feet. (E2:1). The Taxpayer admits that the indicated value is an average, regardless of quality, condition, interior finish or other factors which might influence value. Although the Taxpayer did testify that under certain circumstances at a future date he would sell the manufactured home for a value specified in the NADA Guide effective at that future date to the owner of the property on which the manufactured home is located, the Taxpayer's opinion of actual or fair market value based primarily on the NADA On-Line Guide to Manufactured Home Values is neither clear nor convincing evidence of the actual or fair market value of the subject property as of the assessment date.

The Taxpayer also alleges that a 60% accrued depreciation factor should be attributed to the subject property. The Assessor attributed a physical depreciation factor of 35% to the subject property. (E12:2). The Assessor also attributed a 10% economic or external obsolescence factor to the subject property. (E12:2). The Board, after hearing the Taxpayer's protest, increased the physical depreciation factor to 43% and attributed the same 10% economic or external obsolescence factor used by the Assessor. (E12:1). The Taxpayer alleges that these factors fail to adequately consider the subject property's physical and external or economic obsolescence, particularly with reference to

the location of the subject property. "External Obsolescence" is the loss in value as a result of an impairment in utility and desirability caused by factors external to the property (outside the property's boundaries) and is generally deemed to be incurable. *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, pp. 155. The Taxpayer alleged that the proximity of a hog confinement facility within two-miles of the subject property; the national unemployment rate; the dissolution of the local school district; and the location of the subject property in an unincorporated village all adversely impacted actual or fair market value. The Taxpayer, however, failed to adduce any evidence quantifying the impact on actual or fair market value of any of these factors. There is, therefore, no evidence supporting the Taxpayer's requested 60% accrued depreciation factor.

The Taxpayer also offered testimony regarding the 2004 assessed value of the subject property. Neither the prior year's assessed value nor the subsequent year's assessed value is relevant to the current year's assessed value. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

The Taxpayer has failed to adduce any clear and convincing evidence of actual or fair market value for the subject property.

A taxpayer who does not offer clear and convincing evidence of value but does offer evidence aimed at discrediting the Board's methodology fails to meet his or her burden of proof. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

**VI.
CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the Parties and over the subject matter of this appeal.
2. 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).
3. "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).

4. 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).
5. Where a county assessor does not make a personal inspection of the property, there is no presumption as to the validity of the official assessment. *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 580, 144 N.W.2d 161, 169 (1966).
6. Neither the prior year's assessed value nor the subsequent year's assessed value is relevant to the current year's assessed value. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).
7. A taxpayer who does not offer evidence that the subject property is valued in excess of its actual value but does produce evidence that is aimed at discrediting the valuation

methods used to value the property fails to meet his or her burden of proving that value of the property was not fairly and proportionately equalized or that value placed upon the property for tax purposes was unreasonable or arbitrary.

Beynon v. Board of Equalization of Lancaster County, 213 Neb. 488, 329 N.W.2d 857 (1983).

8. The Taxpayer has failed to adduce clear and convincing evidence of actual or fair market value. In the absence of this evidence the Board's determination of value must be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Clay County Board of Equalization's Order setting the assessed value of the subject property for tax year 2003 is affirmed.
2. The Taxpayer's 1994 Schult manufactured home located on leased land legally described as Lots 2 through 7, Block 7, unincorporated Village of Inland, Clay County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$	-0-
Improvements	\$	31,580
Total	\$	31,580

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 Clay County Treasurer, and the Clay County Assessor, 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 Reynolds made and entered the above and foregoing Findings and Orders in this appeal on the 8th day of July, 2004. Commissioner Hans dissented and would have granted the Taxpayer the relief requested. Commissioner Lore and I, however, approved and confirmed the Findings and Orders, which are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Reissue 2003).

Signed and sealed this 9th day of July, 2004.

SEAL

Wm. R. Wickersham, Chair