

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

DALE D. ENGELKING,)	
)	
Appellant,)	CASE NO. 03R-101
)	
vs.)	
)	FINDINGS AND FINAL ORDER
CASS COUNTY BOARD OF)	DENYING RELIEF
EQUALIZATION,)	
)	
Appellee.)	

Appearances:

For the Appellant: Dale D. Engelking
P.O. Box 101
South Bend, NE 68058

For the Appellee: Nathan B. Cox, Esq.
Cass County Attorney
346 Main Street
Plattsmouth, NE 68048

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

**I.
STATEMENT OF THE CASE**

Dale D. Engelking ("the Taxpayer") has a leasehold interest in a tract of land legally described as Lot 14, North Lake, Cass County, Nebraska. (E21:1). The Taxpayer also owns the improvements on the leased land, which include a double-wide modular home with 960-square feet of above-grade finished living area built in 1974 ("the subject property"). (E21:3).

The Cass County Assessor ("the Assessor") determined that the subject property's actual or fair market value was \$89,471 as of the January 1, 2003, assessment date. (E1:2). The Taxpayer timely filed a protest of that determination and alleged that

subject property's actual or fair market value was \$67,549. (E1:1). The Cass County Board of Equalization ("the Board") granted the protest in part and found that the subject property's actual or fair market value of the property was \$77,361 as of the assessment date. (E1:2).

The Taxpayer appealed the Board's decision on August 20, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 10, 2003, which the Board answered on September 29, 2003. The Commission issued an Amended Order for Hearing and Amended Notice of Hearing to each of the Parties on May 28, 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 September 7, 2004. The Taxpayer appeared personally at the hearing. The Board appeared through Nathan B. Cox, the Cass County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer.

II. ISSUES

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayer's valuation and equalization

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 Taxpayer's opinion of actual or fair market value for the improvement component of the subject property is

\$17,118. (E2:1). This opinion is based on an application of the Cost Approach which is not in accordance with professionally accepted appraisal practices.

2. The owners of the leasehold interests in the Taxpayer's "comparable" properties are not assessed for the value of their leasehold interests. The owner of the land is assessed for the value of the leasehold interests.

**V.
ANALYSIS**

**A.
THE IMPROVEMENTS**

**I.
VALUATION**

The Taxpayer alleges (1) the year 2033 termination date adversely impacts his leaseholds' actual or fair market values; (2) his improvements' values exceed the improvements' actual or fair market values; and (3) the value of his leasehold interests must be equalized with two comparable properties (E10; E11) which show no assessed values for leasehold interests.

The Taxpayer alleges the year 2033 termination date adversely impacts his leasehold interests' actual or fair market values. The Taxpayer's only evidence of the value of the leasehold interests for his property is his opinion evidence. The Taxpayer failed to adduce any evidence concerning the impact of the prospective termination of the lease on the value of the

improvements. State law requires that an improvements' owner who claims his interest's value is reduced due to the prospective termination of the lease serve a notice of that claim on the owner of the land and on the assessor. Neb. Rev. Stat. §77-1375(2) (Reissue 2003). The Taxpayer failed to serve the required notice. This allegation has no merit.

The Taxpayer further alleges that his improvements' values exceed actual or fair market values. The Taxpayer's opinion of value for the improvements is \$17,118. The Taxpayer's opinion of value for the improvement component is based on the *Marshall-Swift Residential Cost Handbook*. (E2:1; E4). The calculations used to reach the opinion of value are not readily apparent from the record. Critical components of the Cost Approach include the Replacement Cost New, Effective Age, Economic Life, and Depreciation. *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, pp. 128 - 129. The results of the Cost Approach must be reconciled with the market for comparable properties. *The Appraisal of Real Estate*, 12th Ed., Appraisal Institute, 2001, p. 365. There is no evidence describing how the critical components of the Cost Approach were determined, and there is no evidence that the results were reconciled with the market. There is, therefore, no clear and convincing evidence that the improvement component of the subject property exceeds actual or fair market value.

ii.
EQUALIZATION

The Taxpayer alleges that "Even tho (sic) all 6 of these mobil (sic) homes are about the same size, and age, there is over \$31,000 difference in the assessed value between the 6 properties. That is too big of a difference for similar property." (E2:1). "Comparable properties" share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 98. When using "comparables" to determine value, similarities and differences between the subject property and the comparables must be recognized. *Property Assessment Valuation*, 2nd Ed., 1996, p.103. "Financing terms, market conditions, location, and physical characteristics are items that must be considered when making adjustments . . . " *Property Assessment Valuation*, 2nd Ed., 1996, p. 98. Most adjustments are for physical characteristics. *Property Assessment Valuation*, 2nd Ed., 1996, p.105. The Taxpayer failed to quantify the adjustments necessary to render the Taxpayer's "comparables" truly comparable to the subject property. In the absence of this information, the mere fact that different modular homes have different assessed values does not rise to the level of clear and convincing evidence of disparate treatment.

B.
EQUALIZATION OF ASSESSED VALUE OF LEASEHOLD INTEREST

The Taxpayer alleges that a zero assessed value for a leasehold interest for "comparable" properties on Cedar Lodge Lake compels equalization of his leasehold interest at zero.

Equalization is defined as 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. 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). This relief, however, is only appropriate where "the discrepancy was not the result of an error of judgment but was a deliberate and intentional discrimination systematically applied." This relief is also only appropriate where the taxpayer whose property alone is taxed at 100 per cent of its true value. *Kearney Convention Center v. Buffalo County Board of*

Equalization, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984). The Taxpayer has failed to satisfy these requirements.

The record establishes that the Taxpayer's "comparable" properties do carry an assessed value for the leasehold interests. Assessments of the leasehold interest for those properties are all paid by Cedar Lodge, Inc., and then passed on to lessees who are all stockholders in Cedar Lodge, Inc.. (E35:4; E37).

C. CONCLUSION

In the valuation of real property for tax purposes the critical issue is the actual value of the entire property, not the proportion of that value which is allocated to the individual components. *Bumgarner v. Valley County*, 208 Neb. 361, 366 - 367, 303 N.W.2d 307, 311 (1981). There is no evidence that the Taxpayer's property's assessed value, taken as a whole, exceeds actual or fair market value. There is no clear and convincing evidence that the Taxpayer's leasehold interests' assessed value is not equalized with comparable property. Based upon the applicable law, the Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was [incorrect and either] unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998);

Neb. Rev. Stat. §77-5016(7) (Reissue 2003). 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. A difference of opinion of value alone does not overcome the statutory presumption. *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).
7. The Taxpayer has failed to adduce clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Board's decision must accordingly be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Cass County Board of Equalization's Order setting the assessed value of the subject property for tax year 2003 are affirmed.
2. The Taxpayer's real property legally described as the leasehold interest in Lot 14, North Lake, Cass County, Nebraska, and the improvements thereto shall be valued for purposes of taxation in the amount of \$77,361 for tax year 2003, as determined by the Board.
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 Cass County Treasurer, and the Cass 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.

Dated this 10th day of September, 2004.

Robert L. Hans, Commissioner

Susan S. Lore, Commissioner

Mark P. Reynolds, Vice-Chair

SEAL

Wm. R. Wickersham, Chair