

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

STANLEY A. MARTIN,)	
)	
Appellant,)	CASE NO. 03R-21
)	
vs.)	
)	FINDINGS AND
CASS COUNTY BOARD OF)	FINAL ORDER
EQUALIZATION,)	
)	
Appellee.)	

Appearances:

For the Appellant: Jesse E. Rust, Esq.
P.O. Box 267
Elmwood, NE 68349

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**

Stanley A. Martin ("the Taxpayer") has a leasehold interest in a tract of land legally described as Lot 47, North Lake, Cass County, Nebraska. (E3:2). The Taxpayer also owns the improvements on the leased land, which include a low-cost, single-family recreational residence with 520-square feet of above-grade finished living area built in 1966 ("the subject property"). (E4:3).

The Cass County Assessor ("the Assessor") determined that the subject property's actual or fair market value was \$70,542 as of the January 1, 2003, assessment date. (E1:1). The Taxpayer

timely filed a protest of that determination and alleged that subject property's actual or fair market value was \$21,000. (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 \$64,422 as of the assessment date. (E1:2).

The Taxpayer appealed the Board's decision on August 11, 2003. The Commission served a Notice in Lieu of Summons on the Board on August 21, 2003, which the Board answered on September 12, 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 9, 2004. The Taxpayer appeared personally at the hearing and with counsel, Jesse Rust, Esq.. 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 improvement valuation 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 value appears to be based on the opinion of value reached by his Appraiser.
2. The Taxpayer's Appraiser's opinion of value is not credible.

**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 here offered no independent opinion of value. The Taxpayer based his opinion of value on that opinion reached by his Appraiser.

The Taxpayer's Appraiser is an appraiser licensed by the State of Nebraska. The Appraiser prepared a document purporting to establish value. (E4). The Taxpayer's Appraiser described the document as a "Self-Contained Appraisal Report." A "self-contained appraisal report" must, at a minimum:

"state the identity of the client and any intended users, by name or type; state the intended use of the appraisal; describe information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics

relevant to the assignment; state the real property interest appraised; state the purpose of the appraisal, including the type and definition of value and its source; state the effective date of the appraisal and the date of the report; describe sufficient information to disclose to the client and any intended users of the appraisal the scope of work used to develop the appraisal; state all assumptions, hypothetical conditions, and limiting conditions that affected the analyses, opinions and conclusions; describe the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions; state the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal; and, when the purpose of the appraisal is market value, describe the support and rationale for the appraiser's opinion of the highest and best use of the real estate; state and explain any permitted departures from requirements of STANDARD 1 and the reason for excluding any of the usual valuation approaches; and include a signed certification in accordance with Standards Rule 2-3."

Uniform Standards of Professional Appraisal Practice, the Appraisal Institute, 2004, pp. 22 - 25. *The Taxpayer's Appraisal*

is a 7-page document which violates almost every provision of Standard 2-2. The document, for example, is not prepared under one of the three reporting options (Standards Rule 2-2); it does not state the reporting option used (Standards Rule 2-2); it does not identify the client and intended users (Standards Rule 2-2(a)(I)); it does not state the intended use of the appraisal (Standards Rule 2-2(a)(2)); it does not state the purpose of the appraisal (Standards Rule 2-2(a)(v)); it does not state the effective date of the appraisal (Standards Rule 2-2(a)(vi)); it only contains a Cost Approach to value, without disclosing a basis for failing to include the Income Approach or the Sales Comparison Approach, and it does not contain an effective date.

The Cost Approach used by the Taxpayer's Appraiser is also flawed. The Taxpayer's Appraiser testified he used the "mid-year" edition of the *Marshall-Swift Residential Handbook* to determine the Replacement Cost New, the effective age, the life-expectancy of the improvements, and the accrued depreciation. In the Cost Approach the depreciation attributable to all causes is extracted from the market, or calculated when market extraction is not possible, and deducted from the cost to arrive at the depreciated cost. *The Appraisal of Real Estate*, 12th Ed., Appraisal Institute, 2001, p. 365. There is no evidence that the Taxpayer's Appraiser reconciled his results with the market. The Taxpayer's Appraiser's Cost Approach is not credible evidence of

the market value of the improvement component of the subject property.

The Taxpayer's Appraiser also testified that the value of the Taxpayer's leasehold was between \$65,000 and \$75,000, even if the improvement value was zero. The Board's value of the leasehold is listed as \$21,000, and the value of the improvements is listed as \$43,422, for a total of \$64,422. (E1:2). 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 evidence that the Taxpayer's property's assessed value is not equalized with comparable properties. The Board's decision must accordingly be affirmed.

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).

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. 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).
6. 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 is affirmed.
2. The Taxpayer's real property legally described as Lot 47, North Lake, Cass County, Nebraska, shall be valued for

purposes of taxation in the amount of \$64,422 for tax year 2003.

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.

I certify that Commissioner Lore made and entered the above and foregoing Findings and Orders in this appeal on the 7th day of September, 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 8th day of September, 2004.

SEAL

Wm. R. Wickersham, Chair