

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

RICHARD GREATHOUSE and	)	
HAPPY V. GREATHOUSE,	)	
	)	CASE NO. 03R-169
Appellants,	)	
	)	
vs.	)	FINDINGS AND FINAL ORDER
	)	DENYING RELIEF
BANNER COUNTY BOARD OF	)	
EQUALIZATION,	)	
	)	
Appellee.	)	

Appearances:

For the Appellants: Richard Greathouse  
2650 Road 57  
Harrisburg, NE 69345

For the Appellee: James L. Zimmerman, Esq.  
Banner County Attorney  
P.O. Box 700  
Scottsbluff, NE 69363-0700

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

**I.  
STATEMENT OF THE CASE**

Richard Greathouse and Happy V. Greathouse ("the Taxpayers") own a in Section 34, Township 19, Range 54, in Banner County, Nebraska. (E32:2). The tract of land is improved with a single-family residence with 1,902 square feet of above-grade finished living area built in 1956 ("the subject property"). (E36:1). There are also five outbuildings on the property. (E36:2).

The Banner County Assessor ("the Assessor") determined that the subject property's assessed value, including the agricultural land component, the non-agricultural land component, and all

improvements was \$192,203 as of the January 1, 2003, assessment date. (E32:2). The Taxpayers timely filed a protest of that determination and requested that the assessed value be reduced. (E1). The Banner County Board of Equalization ("the Board") granted the protest in part and found that the assessed value of the property was \$100,925 as of the assessment date. (E1).

The Taxpayers 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 1, 2003. The Commission issued an Order for Hearing and 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 Scottsbluff, Scotts Bluff County, Nebraska, on September 22, 2004. The Taxpayers appeared personally at the hearing. The Board appeared through James L. Zimmerman, the Banner 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 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 only issue before the Commission is the value of the improvement component of the subject property.

2. The assessed value of the residential improvements, after Board action, was \$54,270 as of the assessment date. The value of the outbuildings was \$3,574 as of the assessment date.
3. The Taxpayers adduced evidence in the form of opinion testimony that the improvements were overvalued. The Taxpayers adduced no other evidence of actual or fair market value for the improvement component of the subject property.

**V.  
ANALYSIS**

The Taxpayers alleged in their protest that the assessed value of the improvement component of the subject property exceeded actual or fair market value. One of the Taxpayers testified that the actual or fair market value of the residential improvements was \$37,000 to \$39,000, and the value of the Quonset hut was \$1,000. The other Taxpayer testified that the actual or fair market value of the residential improvements was between \$35,000 and \$40,000 as of the assessment date. The Taxpayers agreed that the Quality of Construction for the residential improvements was "Average" and that the "Condition" of the residential improvements was "Wornout+." (E36:1).

The members of the Banner County Board of Equalization inspected the subject property prior to reaching their decision concerning the Taxpayers' protest. The Taxpayers adduced no

evidence of prices paid for comparable properties. The burden of persuasion imposed on the complaining taxpayers is not met by showing a mere difference of opinion. *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999). A taxpayer who only produces evidence that is aimed at discrediting valuation methods utilized by county assessor fails to meet his or her burden of proving that value of the property was not fairly and proportionately equalized or that valuation 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).

**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. The Taxpayer has failed to adduce clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary.
6. The Taxpayer has failed to adduce clear and convincing evidence that the Board's determination of value was unreasonable.
7. The Board's decision must accordingly be affirmed.

**VII.  
ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:**

1. The Banner 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 the SE $\frac{1}{4}$ ; N $\frac{1}{2}$ NW $\frac{1}{4}$ ; SE $\frac{1}{4}$ NW $\frac{1}{4}$ , of Section 34, Township 19, Range 54, Banner County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$ 43,081
Improvements	
Residential	\$ 54,270
Outbuildings	\$ 3,574
Total	\$100,925

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 Banner County Treasurer, and the Banner 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 21<sup>st</sup> day of September, 2004. Commissioner Hans dissented, and would have increased the depreciation attributed to the residential improvements. Commissioner Lore's decision was, however, approved and confirmed by Commissioners Reynolds and Wickersham and is therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Reissue 2003).

Signed and sealed this 22<sup>nd</sup> day of September, 2004.

**SEAL**

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*Wm. R. Wickersham, Chair*