

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

HOLLIS E. JENNINGS,)	
)	
Appellant,)	CASE NO. 03R-178
)	
vs.)	
)	FINDINGS AND
CASS COUNTY BOARD OF)	FINAL ORDER
EQUALIZATION,)	
)	
and)	
)	
NEBCO, INC., A Nebraska)	
Corporation,)	
)	
Appellees.)	

Appearances:

For the Appellant: Hollis E. Jennings
7420 South St., No. 19
Lincoln, NE 68506

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

For the Appellee Mr. Shannon Doering, Esq.
NEBCO, Inc.: P.O. Box 80268
Lincoln, NE 68501

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

**I.
STATEMENT OF THE CASE**

Hollis E. Jennings ("the Taxpayer") holds a leasehold interest in a tract of land legally described as Lot 75, North Lake, Cass County, Nebraska. (E3:2). The tract of land is improved with a low-cot one-story single-family recreational

residence with 712- square feet of above-grade finished living area built in 1982. (E3:2).

The Cass County Assessor ("the Assessor") determined that the Taxpayer's leasehold and improvements' ("the subject property") actual or fair market value was \$73,061 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 \$47,550. (E1:1). The Cass County Board of Equalization ("the Board") granted the protest in part and determined that the subject property actual or fair market value of the property was \$71,065 as of the assessment date. (E1:2).

The Taxpayer appealed the Board's decision on August 25, 2003. The Commission served a Notice in Lieu of Summons on the Board and on Nebco, which each Party answered. The Commission issued an Amended Order for Hearing and Notice of Hearing to each of the Parties on June 1, 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 10, 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 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 Taxpayer's allegation that Neb. Rev. Stat. §77-1376 (Reissue 2003) does not allow the value of a leasehold interest to be assessed as real property.
2. The Taxpayer adduced no evidence or argument in support of his allegation.

**V.
ANALYSIS**

State law requires that all real property be assessed for purposes of taxation. Neb. Rev. Stat. §77-201 (Reissue 2003). Neb. Rev. Stat. §77-201(2000 Cum. Supp.) provides that:

"Real Property shall mean: (1) All land; ... and (5) All privileges pertaining to real property described in subdivisions (1) through (4) of this section."

Neb. Rev. Stat. §77-103 (Reissue 2003). The rules and regulations of the Property Tax Administrator contain the following definition: "Privileges pertaining to real property shall mean the right to sell, lease, use, give away, or enter and the right to refuse to do any of these. All rights may or may not be vested in one owner or interest holder." *Title 350, NAC, ch. 10, §001.01F (07/02)*. Leasehold interests are, therefore,

"real property" under both state law and the rules and regulations of the Property Tax Administrator. See, e.g., *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).

State law does, in fact, require that leasehold interests be assessed as real property for purposes of ad valorem taxation. 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 Taxpayer has failed to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Board's decision accordingly must 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 leasehold interest in that real property legally described as Lot 75, North Lake, Cass County, Nebraska, and the improvements thereon shall be valued for purposes of taxation in the amount of \$71,065, 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.

I certify that Commissioner Lore made and entered the above and foregoing Findings and Orders in this appeal on the 10th 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 10th day of September, 2004.

SEAL

Wm. R. Wickersham, Chair