

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

BOYD D. CLEMENTS,)	
)	
Appellant,)	CASE NO. 03R-191
)	
vs.)	
)	FINDINGS AND
CASS COUNTY BOARD OF)	FINAL ORDER DENYING RELIEF
EQUALIZATION,)	
)	
Appellee.)	

Appearances:

For the Appellant: Richard L. Clements, Esq.
Clements, Drevo & Rust
P.O. Box 267
Elmwood, NE 68349

For the Appellee: S. Colin Palm, Esq.
Chief Deputy Cass County Attorney
346 Main Street
Plattsmouth, NE 68048

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

**I.
STATEMENT OF THE CASE**

Boyd D. Clements ("the Taxpayer") has a leasehold interest in a tract of land legally described as Lot 4, North Lake, Cass County, Nebraska. (E18:1). The tract of land is improved with a one-story modular home built in 1946. (E18:5). The Cass County Assessor ("the Assessor") determined that the property's actual or fair market value was \$78,629 as of the January 1, 2003, assessment date. (E1:1). The Taxpayer timely filed a protest of that determination and alleged that the property's actual or fair market value was \$32,341. (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 \$76,633 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 on September 19, 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 8, 2004. The Taxpayer appeared personally at the hearing and through counsel, Richard L. Clements, Esq.. The Board appeared through S. Colin Palm, the Chief Deputy Cass County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer.

The Commission afforded each of the Parties the opportunity to present evidence and argument. The Taxpayer, during the course of the hearing, withdrew Exhibit 27 which had been previously supplied to the Commission and to the Board. The Parties offered a joint stipulation that the Commission receive

and consider, to the extent relevant, the exhibits and testimony of Robert K. Clements and Veda Copenhaver, the Cass County Assessor, adduced during hearings held on September 8, 2004, in Case Numbers 03R-192, 03R-193, and 03R-195. The Commission accepted the offered stipulation. The Board rested its case without adducing testimony of any witnesses.

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 offered no opinion of actual or fair market value for his leasehold interest. The Taxpayer's opinion of actual or fair market value for the improvement component of his property was \$32,341 as of the assessment date.
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

The Taxpayer alleges (1) his assessed value exceeds actual or fair market value; and (2) 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 that the assessed value of his property exceeded actual or fair market values. 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 had no opinion of value for the leasehold interest component of his property. The Taxpayer testified that his opinion of value for the improvements was based solely on the calculations shown in Exhibit 12. The Taxpayer prepared the Cost Approach calculations shown on Exhibit 12 with the assistance of counsel.

The Taxpayer's calculations use two different per square foot costs for Replacement Cost New: \$55.50 and \$55.43 per square foot. (E12). The Taxpayer was unable to explain why different cost factors were used. The Board's Cost value for the improvements, \$55,633, indicates an average Replacement Cost New Less Depreciation of \$68.18 per square foot. The Taxpayer was unable to explain why his Replacement Cost New per square foot costs were significantly lower than the Replacement Cost New Less Depreciation value of the improvements as determined by the Board. There is no evidence that the Taxpayer reconciled the results of his calculations with the market for comparable properties as required by professionally accepted appraisal practices. *The Appraisal of Real Estate*, 12th Ed., Appraisal Institute, 2001, p. 365.

The Taxpayer's opinion of value differs from the Board's for the recreational improvements. A difference of opinion of value alone, however, does not overcome the statutory presumption. *U.S. Ecology, Inc. v. Boyd County Bd. of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).

The Taxpayer also alleges that a zero assessed value for a leasehold interest for two "comparable" properties compels equalization of his leasehold interests at zero. The two "comparable" properties are lots located on a lake approximately eight-miles east of North Lake. The Board adduced a copy of the plat map for North Lake. (E26:3 - 5). The Taxpayer, however, failed to adduce copies of a plat map or any other evidence demonstrating the size, layout, location, beachfront, lake access or any other features of Cedar Lodge Lake lots. Under professionally accepted mass appraisal methods, no two parcels of land are exactly alike. "They might be identical in size and physical characteristics, but each parcel has a unique location and is likely to differ from other parcels in some way. Typical differences requiring adjustments are in time of sale, location, and physical characteristics. Adjustments may also need to be made for atypical financing." *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 76.

There is no evidence that the "comparable" lots are truly comparable to the subject properties. Furthermore, the value of the leasehold interest for the "comparable" properties are all paid by Cedar Lodge, Inc., and then passed on to lessees who are all stockholders in Cedar Lodge, Inc.. 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 Taxpayer argued that Cedar Lake, Inc., isn't the proper party to pay the taxes for the leasehold interests of its lessees. The Taxpayer, however, failed to establish how the allocation of the payment of taxes by two parties who are not before the Commission is relevant to these appeals. The issues before the Commission were the actual value and the equalized value. This argument has no merit.

Finally, 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 clear and convincing evidence that the Taxpayer's property's assessed value, taken as a whole, exceeds actual or fair market value. 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, as amended by 2004 Neb. Laws, L.B. 973, §51). 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. 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 Orders setting the assessed value of the subject property for tax year 2003 is affirmed.
2. The Taxpayer's real property legally described as the leasehold interest in Lot 4, North Lake, Cass County, Nebraska, and the improvements thereto shall be valued for purposes of taxation in the amount of \$76,633 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.

I certify that Commissioner Lore made and entered the above and foregoing Findings and Orders in this appeal on the 8th 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 9th day of September, 2004.

SEAL

Wm. R. Wickersham, Chair