

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

ROBERT K. CLEMENTS and PEGGY	)	
S. CLEMENTS,	)	
	)	CASE NO. 03R-192
Appellants,	)	03R-193
	)	
vs.	)	FINDINGS AND FINAL ORDER
	)	DENYING RELIEF
CASS COUNTY BOARD OF	)	
EQUALIZATION,	)	
	)	
Appellee.	)	

Appearances:

For the Appellant: Richard L. Clements, Esq.  
Clements, Drevo & Rust  
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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**

Robert K. Clements and Peggy S. Clements ("the Taxpayers") have a leasehold interest in a tract of land in Case Number 03R-192 legally described as Lot 5, North Lake, Cass County, Nebraska. (E17:16). The tract of land is improved with a double-wide modular home built in 1970. (E17:18). The Cass County Assessor ("the Assessor") determined that the property's actual or fair market value was \$51,762 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 \$17,235. (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 \$49,767 as of the assessment date. (E1:2). The Taxpayer appealed the Board's decision on August 25, 2003.

The tract of land in Case Number 03R-193 is legally described as Lot 8, North Lake, Cass County, Nebraska. (E18:1). This tract of land is also improved with a "stick built" home built in 1955. (E18:1). The Assessor determined that this property's actual or fair market value was \$75,967 as of the assessment date. (E1:3). The Taxpayer timely filed a protest of that determination and alleged that the property's actual or fair market value was \$18,209. (E1:3). The Board granted the protest in part and found that the subject property's actual or fair market value of the property was \$73,972 as of the assessment date. (E1:4). The Taxpayer appealed this decision on August 25, 2003.

The Commission served a Notice in Lieu of Summons in each case on the Board on September 19, 2003, which the Board answered on September 29, 2003. The Commission consolidated the appeals for purposes of hearing and 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 with counsel, Richard 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, adduced Exhibits 27 and 28 and certain testimony from a witness concerning those exhibits. That evidence was later withdrawn in its entirety without objection from the Board. 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's opinion of actual or fair market value in Case Number 03R-192 was \$60,000. This opinion of value is greater than the assessed value of \$49,767 determined by the Board.
2. The Taxpayer's opinion of actual or fair market value in Case Number 03R-193 was \$70,000. This opinion of value is

within \$3,972, or 5.37% of the Board's determination of value.

3. 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) 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. 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's opinions of value for both the leasehold interest and improvements, are \$60,000 in Case Number 03R-192 and \$70,000, in Case Number 03R-193. 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's opinion of value in Case Number 03R-192 is higher than the Board's determination of value. The Taxpayer's opinion of value in Case Number 03R-193 is within 5.37% of the Board's determination of value. A difference of opinion of value alone, however, 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).

The Taxpayer offered an opinion of value for the improvement component of the subject properties. (E13; E14). The Taxpayer testified that updates had been made to the improvement component. The Taxpayer testified he didn't know the impact of these updates on the effective life, which could significantly

impact depreciation. The Taxpayer also failed to reconcile the results of his calculation with the market for comparable properties. *The Appraisal of Real Estate*, 12<sup>th</sup> Ed., Appraisal Institute, 2001, p. 365. These calculations were not prepared in accordance with generally accepted appraisal practices.

The Taxpayer alleges that a zero assessed value for a leasehold interest for two "comparable" property compels equalization of his leasehold interest 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*, 2<sup>nd</sup> 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.

Later, 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, the Taxpayer alleges that the value of his improvements on leased land should be assessed against the owner of the land. The Taxpayer filed a Form 402, Assessment Application for Improvements on Leased Land, for Lot 5. That application requests that the value of the improvements be assessed against the Taxpayer for that property. (E29). The Taxpayer did not execute a similar document for the property at Lot 8. (E30). A Form 402 was filed by a prior owner directing that improvements be taxed to the owners of the improvements. The Taxpayer, however, has received the Notice of Valuation Change for the property since he acquired it; he has paid the taxes for the improvements since he acquired them; he is required to pay these taxes under the terms of his lease; he did not raise the issue in his written protest; he did not raise the issue in the hearing before the Cass County Referee; and he did not raise

the issue in the hearing before the Board. The Commission only has subject matter jurisdiction over those issues raised before the county board of equalization. See, e.g., *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb.App. 499, 505, 583 N.W.2D 353, 357 (1998). The Commission lacks subject matter jurisdiction over this allegation.

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 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). 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. 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 Orders setting the assessed values of the subject properties for tax year 2003 are affirmed.
2. The Taxpayer's real property in Case Number 03R-192 legally described as the leasehold interest in Lot 5, North Lake, Cass County, Nebraska, and the improvements thereto shall be valued for purposes of taxation in the amount of \$49,767 for tax year 2003, as determined by the Board.

3. The Taxpayer's real property in Case Number 03R-193 legally described as the leasehold interest in Lot 8, North Lake, Cass County, Nebraska, and the improvements thereto shall be valued for purposes of taxation in the amount of \$73,972 for tax year 2003, as determined by the Board.
4. Any request for relief by any Party not specifically granted by this order is denied.
5. 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).
6. This decision shall only be applicable to tax year 2003.
7. 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 8<sup>th</sup> 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 9<sup>th</sup> day of September, 2004.

**SEAL**

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*Wm. R. Wickersham, Chair*