

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

ROY C. PRESSLER,)	
)	
Appellant,)	CASE NO. 03R-89
)	
vs.)	
)	FINDINGS AND FINAL ORDER
LINCOLN COUNTY BOARD OF)	DISMISSING APPEAL AT THE CLOSE
EQUALIZATION,)	OF THE TAXPAYER'S
)	CASE-IN-CHIEF
Appellee.)	

Appearances:

For the Appellant: Roy C. Pressler
503 Sandpiper Way
North Platte, NE 69101

For the Appellee: Joe W. Wright, Esq.
Deputy Lincoln County Attorney
301 North Jeffers Street, Room 101A
North Platte, NE 69101

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

**I.
STATEMENT OF THE CASE**

Roy C. Pressler ("the Taxpayer") holds a leasehold interest in a tract of land legally described as Lot 57, Lake Maloney, Lincoln County, Nebraska. (E9:8). The tract of land is improved with a single-family modular home with 1,792 square feet of above-grade finished living area built in 1992. (E9:10).

The Lincoln County Assessor ("the Assessor") determined that the actual or fair market value of the Taxpayer's leasehold interest and improvements ("the subject property") was \$197,960 as of the January 1, 2003, assessment date. (E1). The Taxpayer

timely filed a protest of that determination and alleged that the subject property's actual or fair market value was \$152,712.

(E1). The Lincoln County Board of Equalization ("the Board") granted the protest in part and found that the subject property's actual or fair market value was \$190,765 as of the assessment date. (E1).

The Taxpayer appealed the Board's decision on August 19, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 8, 2003, which the Board answered on September 29, 2003. The Commission issued a Second Amended Notice of Hearing to each of the Parties on September 16, 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 North Platte, Lincoln County, Nebraska, on September 23, 2004. The Taxpayer appeared personally at the hearing. The Board appeared through Joe W. Wright, Deputy Lincoln County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer.

The Commission afforded the Parties the opportunity to present evidence and argument. Thereafter the Board moved to dismiss the appeal for failure to overcome the statutory presumption.

**II.
ISSUES**

The issues before the Commission are (1) whether the Board's decision to grant the Taxpayer's valuation protest in part 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 testified that in his opinion the actual or fair market value of the subject property was \$140,000 to \$150,000.
2. The Taxpayer allocated \$90,000 of this amount to the improvements based on replacement cost, and \$50,000 to the value of the leasehold interest.

**V.
ANALYSIS**

The Taxpayer offered an opinion of actual or fair market value for the subject property of \$140,000 to \$150,000. An owner who is familiar with his property and knows its worth is permitted to testify as to its value. *US Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999). The Taxpayer's opinion of actual or fair market value of the improvement component of the subject property is \$90,000, its replacement cost. Cost is not necessarily actual or fair market value. *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2D 631, 637, (1998). The Cost Approach Worksheet for the subject property (E10:13) results in a Replacement Cost New Less Depreciation of \$86,262. This value is

less than the Taxpayer's opinion of actual or fair market value at replacement cost was \$90,000.

The Taxpayer allocated \$50,000 of his opinion of actual or fair market value to his leasehold interest. The Taxpayer adduced no evidence in support of his opinion of value for the leasehold. The Taxpayer upon examination twice testified that the value of the leasehold interest could be as much as \$104,505. That amount, when added to the assessed value of the improvement component of the subject property, supports the Board's determination of value.

The Board's Motion to Dismiss must accordingly be granted.

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. 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).
6. The Board, based upon the applicable law, 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).

7. The Taxpayer has failed to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary.
8. The Board's Motion to Dismiss must accordingly be granted.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. This appeal, on motion of the Board, is dismissed.
2. The Lincoln County Board of Equalization's Order setting the assessed value of the subject property for tax year 2003 is therefore final.
3. The Taxpayer's real property legally described as Lot 57, Lake Maloney, Lincoln County, Nebraska, shall be valued in the amount of \$190,765 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 Lincoln County Treasurer, and the Lincoln 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 I made and entered the above and foregoing Findings and Orders in this appeal on the 23rd day of September, 2004. The same were approved and confirmed by Commissioners Hans, Lore and Reynolds 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 24th day of September, 2004.

SEAL

Wm. R. Wickersham, Chair