

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

BRENT D. MEYER and)	
JUDY K. MEYER,)	
)	CASE NO. 04R-88
Appellant,)	
)	FINDINGS AND ORDER
vs.)	AFFIRMING THE DECISION OF THE
)	DAWSON COUNTY BOARD OF
DAWSON COUNTY BOARD OF)	EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Brent D. Meyer and Judy K. Meyer to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Hampton Inn, 200 Platte Oasis Parkway, in the City of North Platte, Lincoln County Nebraska, on June 23, 2005, amended to June 22, 2005, pursuant to a Notice and Order for Hearing issued February 8, 2005. Commissioners Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Brent D. Meyer and Judy K. Meyer ("the Taxpayer") appeared at the hearing without counsel.

The Dawson County Board of Equalization ("the County Board") appeared through counsel, Kurt R. McBride, Esq., a Chief Deputy County Attorney for Dawson County, Nebraska.

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Reissue 2003, as amended by 2005 Neb. Laws L.B. 15 §10) to state its final decision concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case is as follows.

I. STANDARD OF REVIEW

The Taxpayer, in order to prevail, is required to demonstrate that the decision of the County Board was incorrect and arbitrary or unreasonable. Neb. Rev. Stat. §77-5016(8)(Cum. Supp. 2004, as amended by 2005 Neb. Laws L.B. 15 §9). The presumption created by the statute can be overcome if the Taxpayer shows by clear and convincing evidence that the County Board either failed to faithfully perform its official duties or that the County Board failed to act upon sufficient competent evidence in making its decision. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). It is the Taxpayer's burden to overcome the presumption with clear and convincing evidence of more than a difference of opinion. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the value as determined by the County Board was unreasonable. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

II. FINDINGS

The Commission finds and determines that:

A. PROCEDURAL FINDINGS

1. The Taxpayer is the owner of record of certain real property described in the appeal as Leasehold and Improvement Lot 22 Bass Bay, Johnson Lake, Dawson County, Nebraska ("the subject property").

2. The actual or fair market value of the subject property, placed on the assessment roll as of January 1, 2004, ("the assessment date") by the Dawson County Assessor was:

Leasehold and improvement value \$71,280.00

Total value \$71,280.00.

3. The Taxpayer timely protested that value to the County Board. The Taxpayer proposed the following value for the subject property:

Leasehold and improvement value \$55,000.00

Total value \$55,000.00.

4. The County Board denied the protest. (E:1)
5. The Taxpayer timely filed an appeal of that decision to the Commission.
6. The County Board was served with a Notice in Lieu of Summons, and duly answered that Notice.
7. A Notice and Order for Hearing issued on February 8, 2005, set a hearing of the Taxpayer's appeal for June 23, 2005, amended to June 22, 2005, at 2:00 p.m. CDST.
8. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Notice and Order for Hearing was served on all parties.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The Taxpayers' leasehold is improved with a 648 square foot cabin built in 1961. The cabin has a crawl space and porch. The cabin is not suitable for year round habitation. (E7:5 and 6)

2. The Taxpayers have not adduced sufficient, clear and convincing evidence to overcome the statutory presumption in favor of the County Board.
3. Based on the entire record before it, the Commission finds and determines that the actual or fair market value of the subject property for the tax year 2004 is:

Leasehold and improvement value \$71,280.00

Total value \$71,280.00.

4. The value of the subject property as of the assessment date determined by the County Board is supported by the evidence.
5. The decision of the County Board was correct and neither arbitrary nor unreasonable.
6. The decision of the County Board should be affirmed.

III. CONCLUSIONS OF LAW

1. Subject matter jurisdiction of the Commission is over all issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998)
2. The Commission has jurisdiction over the parties and the subject matter of this appeal.
3. The Commission, while making a decision, may not consider testimony, records, documents or other evidence which is not a part of the hearing record except those identified in the Commission's rules and regulations or Section 77-5016 (3). Neb. Rev. Stat. §77-5016(3) (Cum. Supp 2004, as amended by 2005 Neb. Laws L.B. 15 §9).

4. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004).
5. “Actual value is 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 a 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. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.” Neb. Rev. Stat. §77-112 (Reissue 2003).
6. Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Neb. Rev. Stat. §77-112 (Reissue 2003).
7. “Actual value, market value, and fair market value mean exactly the same thing.” ” *Omaha Country Club V. Douglas County Board of Equalization et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 8241 (2002).
8. The Taxpayer must adduce evidence establishing that the action of the County Board was incorrect and unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp 2004, as amended by 2005 Neb. Laws L.B. 15 §9). The Nebraska Supreme Court, in considering similar language, has held that “There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. That presumption remains until there is competent evidence to the contrary presented, and the presumption

disappears when there is competent evidence on appeal to the contrary. From that point on, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.” *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523, (2001).

9. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736, (2000).
10. The term "unreasonable" can be applied to a decision of an administrative agency only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447, (1999).
11. The Court has also held that “In an appeal to the county board of equalization or to [the Tax Equalization and Review Commission] and from the [Commission] to this court, the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment.” *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523, (2001).

12. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved."
Castellano v. Bitkower, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).
13. "It is the function of the county board of equalization to determine the actual value of locally assessed property for tax purposes. In carrying out this function, the county board must give effect to the constitutional requirement that taxes be levied uniformly and proportionately upon all taxable property in the county. Individual discrepancies and inequalities within the county must be corrected and equalized by the county board of equalization." *AT & T Information Systems, Inc. v. State Bd. of Equalization and Assessment*, 237 Neb. 591, 595, 467 N.W.2d 55, 58, (1991).
14. "It is well established that the value of the opinion of an expert witness is no stronger than the facts upon which it is based." *Bottorf v. Clay County Bd. Of Equalization*, 7 Neb. App. 162, 167, 580 N.W.2d 561, 565, (1998).
15. "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 Equalization*, 256 Neb. 7, 16, 588 N.W.2d 575, 581, (1999).
16. The appraisal of real estate is not an exact science. *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874, (1977).
17. Actual value is a matter of opinion. A sale of the property after the valuation date in question may be considered. The weight to be given to the sale is for the trier of fact. *See, H/K Company v. Board of Equalization of the County of Lancaster*, 175 Neb. 268, 121 N.W.2d 382 (1963).

IV. ANALYSIS

The subject property is located on Johnson Lake in Dawson County. The lake is surrounded by leased lots and some deeded tracts. The Subject Property consists of a leasehold interest in a lot and a cabin on the lot. The Taxpayers obtained an assignment of the leasehold interest and title to the cabin in 1999. The Taxpayers testified that the subject property was listed for sale in September of 2003 but had not sold as of January 1, 2004, the assessment date at issue in their appeal. The Taxpayers also testified that they were under some compulsion to sell because they had purchased other property at Johnson Lake in 2002 and were required to sell the subject property within one year of acquiring an interest in the additional property. The Taxpayers had obtained extensions of the sale deadline by actively seeking to sell the subject property. The Taxpayers testified that the value of the subject property was affected by uncertainty concerning sanitary sewer requirements and that the size of the subject property would not allow a replacement of the existing septic system. The only evidence of the effect of that uncertainty and the constraints of the subject property on its actual value as of January 1, 2004 was its sale in April of 2005. A single sale occurring a year and three months following the assessment date, under some compulsion to sell, is not clear and convincing evidence of actual value for the subject property as of the assessment date.

**V.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the decision of the County Board determining the actual or fair market value of the subject property as of the assessment date, January 1, 2004, as follows:

Leasehold and improvement value \$71,280.00

Total value \$71,280.00

is affirmed.

2. That this decision, if no appeal is timely filed, shall be certified to the Dawson County Treasurer, and the Dawson County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2003).
3. That any request for relief, by any party, which is not specifically provided for by this order is denied.
4. That each party is to bear its own costs in this matter.
5. That this decision shall only be applicable to tax year 2004.

6. This order is effective for purposes of appeal July 1, 2005.

Signed and Sealed. July 1, 2005.

Wm. R. Wickersham, Chairperson

Susan S. Lore, Commissioner

Robert L. Hans, Commissioner

SEAL

ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW CONTAINED IN NEB. REV. STAT. §77-5019 (REISSUE 2003, AS AMENDED BY 2005 NEB. LAWS L.B. 15 §11). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.