

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

LORETTA PILLARD REVOCABLE TRUST,)	
)	
Appellant,)	CASE NO. 03R-147
)	
vs.)	
)	
)	FINDINGS AND ORDER
SAUNDERS COUNTY BOARD OF EQUALIZATION,)	
)	
)	
Appellee.)	

Appearances:

For the Appellant: Loretta Pillard, Trustee
20502 Oak Hollow Circle
Springfield, NE 68059

For the Appellee: Scott Tingelhoff
Saunders County Attorney
433 North Chestnut Street
Wahoo, NE 68066

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

**I.
STATEMENT OF THE CASE**

The Loretta Pillard Revocable Trust ("the Taxpayer") owns an improved tract of land legally described as Lot 98, Thomas Lake, Saunders County, Nebraska. (E35:1). The tract of land is improved with a cabin built in 1977. (E35:2). The State Assessing Official for Saunders County determined that the actual or fair market value of the Taxpayer's real property was \$114,780 as of the January 1, 2003, assessment date. (E35:1). The Taxpayer timely filed a protest of that determination and alleged that the actual or fair market value of the property was \$80,113.

(E1:1). The Saunders County Board of Equalization ("the Board") denied the protest. (E1:1).

The Taxpayer filed an appeal of the Board's decision on August 22, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 12, 2003, which the Board answered on September 15, 2003. The Commission issued an Order for Hearing and Notice of Hearing on November 7, 2003, and served a copy of the Order 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 February 10, 2004. The Loretta Pillard Revocable Trust appeared at the hearing through Loretta Pillard, Trustee for the Trust. The Board appeared through Scott Tingelhoff, the Saunders County Attorney.

The Commission received Substituted Exhibit 1, a copy of the Taxpayer's Protest Form with all attachments and the Board's Referee's Report, over the Board's objection as to the receipt of pages 4 and 5.

The Parties, during the course of the hearing, stipulated that the actual or fair market value of the improvement component was \$46,460 as of the assessment date. The Parties further stipulated that this value was equalized with comparable improvements. The only issues remaining are the actual or fair

market value of the land component of the subject property, and whether that value is equalized with comparable property.

II. ISSUES

The issues before the Commission are (1) whether the Board's decision concerning the actual or fair market value of the land component of the property, and the equalized value of that property, was incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's value was reasonable.

III. APPLICABLE LAW

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the decision of the Board was incorrect and (2) that the decision of the Board was unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7)(Cum. Supp. 2002)). 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 value as determined by the County 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 Board's value for the subject property includes a fireplace; a utility shed; central heating; and 6 plumbing fixtures. The Taxpayer's property has none of these features.
2. The Taxpayer's tract of land is approximately 10,000 square feet in size, and has lake frontage. (E3:2; E35:2).

**V.
ANALYSIS**

The Taxpayer alleges (1) that the Board's value for the land component (\$65,000) exceeded actual or fair market value and (2) that the Board's value was not equalized with comparable properties. The Taxpayer offered two sales of "comparable" property in support of its allegations. (E13:1; E14:1).

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.

When considering the land component of real property, "comparable" properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location. *Id.* at p. 70 - 76.

The Taxpayer's first "comparable" sold in 2000 for \$15,000. (E13:1). The Taxpayer's second "comparable" sold in 2000 for \$12,802. (E14:1). When using "comparables" to determine value, similarities and differences between the subject property and the comparables must be recognized. *Id.* at 103. "Financing terms, market conditions, location, and physical characteristics are items that must be considered when making adjustments . . . " *Property Assessment Valuation*, 2nd Ed., 1996, p. 98.

The Taxpayer adduced no evidence of any adjustments necessary to account for differences between the date of sale for these properties (2000) and the assessment date at issue (2003). Furthermore, each of the Taxpayer's "comparables" had an assessed value of \$65,000 as of the assessment date. (E13:2; E14:2). These exhibits do not establish that the Taxpayer's land is overvalued or not equalized with comparable property.

The Taxpayer adduced other "comparable" properties with assessed values of \$35,000 for the land component (E21; E22).

These properties are not lakefront properties. These exhibits do not establish that the Taxpayer's land is overvalued or not equalized with comparable property.

**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 action of the Board was incorrect and either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002).
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. *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).
4. 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).

5. The Taxpayer has failed to adduce clear and convincing evidence that the Board's decision concerning the assessed value of the land component was incorrect and either unreasonable or arbitrary. The Board's decision must accordingly be affirmed.
6. The Board's decision concerning the value of the improvements, however, must be vacated and reversed based on the Parties' stipulation.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The order of the Saunders County Board of Equalization setting the assessed value of the subject property for tax year 2003 is vacated and reversed.
2. The Taxpayer's real property legally described as Lot 98, Thomas Lake Subdivision, Saunders County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$ 65,000
Improvements	\$ 46,460
Total	\$111,460
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 Saunders County Treasurer, and the Saunders County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (2003 Supp.).
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 February, 2004. The same were approved and confirmed by Commissioners Hans and Wickersham and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (2003 Supp.).

Signed and sealed this 10th day of February, 2004.

SEAL

Wm. R. Wickersham, Chair