

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

LANCE E. SCHERBARTH,)	
)	
Appellant,)	CASE NO. 03A-22
)	
vs.)	
)	FINDINGS AND FINAL ORDER
DAWES COUNTY BOARD OF)	DISMISSING APPEAL AT CLOSE OF
EQUALIZATION,)	TAXPAYER'S CASE-IN-CHIEF
)	
Appellee.)	

Appearances:

For the Appellant: Lance Scherbarth
1300 Table Road
Chadron, NE 69337

For the Appellee: Dennis D. King, Esq.
Special Appointed Counsel
P.O. Box 302
Gordon, NE 69343

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

**I.
STATEMENT OF THE CASE**

Lance E. Scherbarth ("the Taxpayer") owns a 479.80-acre tract of land legally described as N½ and the N½S½ of Section 21, Township 31, Rang3 49, in Dawes County, Nebraska. (E7:1). The tract of land is improved with a single-family residence with 1,538-square feet of above-grade finished living area built in 1928. (E7:4). The tract of land is also improved with a 1½-story structure ("the bunkhouse") with 664-square feet of above-grade living area built in 2002. (E7:3).

The Dawes County Assessor ("the Assessor") determined that the subject property's assessed value was \$153,920 as of the

January 1, 2003, assessment date. (E1). The Taxpayer timely filed a protest of that determination and alleged that the assessed value of the subject property was \$117,000. (E1). The Dawes County Board of Equalization ("the Board") denied the protest. (E1).

The Taxpayer appealed the Board's decision on August 14, 2003. The Commission served a Notice in Lieu of Summons on the Board on August 27, 2003, which the Board answered on September 8, 2003. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on May 28, 2003. 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 Scottsbluff, Scotts Bluff County, Nebraska, on September 21, 2004. The Taxpayer appeared personally at the hearing. The Board appeared through Dennis D. King, Special Appointed Counsel. 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 Board moved to dismiss the appeal at the close of the Taxpayer's case-in-chief for failure to meet the statutory burden of persuasion.

**II.
ISSUES**

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayer's valuation 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 adduced no evidence of actual or fair market value for the cattle shed.
2. The Taxpayer's only evidence of value for the Farm Home Site, the bunkhouse, and the house, is opinion testimony.

**V.
ANALYSIS**

The Taxpayer testified that the assessed value of the agricultural land component of the subject property and the assessed value of nine of the ten agricultural outbuildings is not at issue. The Taxpayer alleged that the value of his Farm Home Site exceeded that of a comparable property. (E7:1; E8:1). The subject property has a "Total Site Value" of \$9,500. (E7:1). The "comparable" property has a "Total Site Value" of \$7,560. (E8:1). The Taxpayer's Site Value includes a one-acre home site with an assessed value of \$7,500, and a Building Site Value of \$2,000. (E7:1). The "comparable" property's Site Value includes a one-acre home-site with an assessed value of \$7,500 and .06 acre of "ST<10" with an assessed value of \$60. This evidence does not establish that the subject property's Farm Home Site value exceeds actual or fair market value.

The Taxpayer also testified that the assessed value of a 32x60x10 Cattle Shed [\$1,920 (E7:1)] exceeded actual or fair market value, but offered no opinion of value for this structure. The Taxpayer also testified that the actual or fair market value of the bunkhouse/log cabin, with an assessed value of \$16,085 (E7:3) was less than \$7,500. The Taxpayer further testified that the value of the residential structure was no more than \$32,075, based on a comparable residence.

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 testified that the \$7,500 value for the log cabin was based on the cost of the concrete slab, windows and tin roof. The Taxpayer later testified that the raw cost of the logs could be \$6 each, excluding any trimming or shaping for use in the construction of a log cabin. The Taxpayer offered no evidence of the value of the "sweat equity" used to build the log cabin.

The Taxpayer testified that the value of the house was \$32,075 based on a "comparable" property described in Exhibit 6, page 2. "Comparable properties" share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation*, 2nd Ed., International Association of Assessing

Officers, 1996, p. 98. When using "comparables" to determine value, similarities and differences between the subject property and the comparables must be recognized. *Property Assessment Valuation, 2nd Ed.*, 1996, p.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. Most adjustments are for physical characteristics. *Property Assessment Valuation, 2nd Ed.*, 1996, p.105.

The Taxpayer's "comparable" property is of "Fair" quality of construction, "Average" condition, has a full basement of which 582 square feet is finished, and 1,456 square feet of above-grade finished living area. (E6:2). The subject property house is of "Average" Quality of Construction; "Average" Condition, has a partial, unfinished basement approximately 914 square feet in size; and 1,538 square-feet of above-grade finished living area. (E7:4). Each of the structures has additions of varying ages. There is no evidence of the adjustments necessary to render the "comparable" property truly comparable to the subject property.

The Taxpayer's opinion evidence is not clear and convincing evidence of value of the cattle shed, the bunkhouse, or the house. The Taxpayer adduced no evidence of the prices paid for comparable properties. The Taxpayer adduced no other evidence of value for the subject property.

The Board moved to dismiss the appeal at the close of the Taxpayer's case. 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).

**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.
6. The Taxpayer has failed to adduce clear and convincing evidence that the Board's determination of value was unreasonable.
7. The Board's Motion to Dismiss must be granted.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Board's Motion to Dismiss is granted.

2. The Dawes 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 the N½ and the N½S½ of Section 21, Township 31, Range 49, in Dawes County, Nebraska, shall be valued as follows for tax year 2003, as determined by the Board:

Land	\$ 80,695
Improvements	
House	\$ 43,430
Bunkhouse	\$ 16,085
Outbuildings	\$ 13,710
Total	\$153,920

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 Dawes County Treasurer, and the Dawes 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 Hans made and entered the above and foregoing Findings and Orders in this appeal on the 21st day of September, 2004. The same were approved and confirmed by Commissioners Lore, 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 22nd day of September, 2004.

SEAL

Wm. R. Wickersham, Chair