

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

ROBERT L. LEWIS and JOSEPHINE)
L. LEWIS,)
)
 CASE NO. 03R-99
Appellants,)
)
)
vs.)
 FINDINGS AND
CASS COUNTY BOARD OF)
EQUALIZATION,)
)
)
 Appellee.

Appearances:

For the Appellant: Robert L. Lewis
4535 Bancroft
Omaha, NE 69106

For the Appellee: Nathan B. Cox
Cass County Attorney
346 Main Street
Plattsmouth, NE 68048

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

**I.
STATEMENT OF THE CASE**

Robert L. Lewis and Josephine L. Lewis ("the Taxpayers") have a leasehold interest in a tract of land legally described as Lot 56, Horseshoe Lake, Cass County, Nebraska. (E10:1). The tract of land is improved with a 1,344 square-foot, one-story recreational home built in 1976. (E10:2). The Cass County Assessor ("the Assessor") determined that the property's actual or fair market value was \$81,409 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 \$65,000. (E11:3). The Cass County Board of Equalization ("the Board") denied the protest. (E1:1). The Taxpayer appealed the Board's decision on August 20, 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 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 9, 2004. The Taxpayer appeared personally at the hearing. The Board appeared through Nathan B. Cox, Esq., the 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 Commission received all of the exhibits offered by the Parties, and received and considered the testimony of the Taxpayer. 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 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 principal complaint is the Assessor's Sales Comparison methodology used sales of property which were on the market for an extended period of time, up to two-years, to value recreational property on Horseshoe Lake in Cass County, Nebraska. The Taxpayer requests that the sales utilized be limited to those properties which sold within 60-days of the date of listing.
2. The Taxpayer's opinion of value (\$65,000) is based on a 60-day marketing period. The Taxpayer adduced no other evidence of value.

**V.
ANALYSIS**

The Taxpayer alleges the Assessor's Sales Comparison approach results in higher assessed values and higher taxes. Actual value of real property for purposes of taxation may be determined using professionally accepted mass appraisal methods, including, but not limited to, (1) the sales comparison approach, taking into account factors such as location, zoning, and current functional use; (2) the income approach; and (3) the cost approach. Neb. Rev. Stat. §77-112 (Reissue 2003). The statute does not require use of all the specified factors, but requires

use of applicable statutory factors, individually or in combination, to determine actual value of real estate for tax purposes. *Schmidt v. Thayer County Bd. of Equalization*, 10 Neb.App. 10, 18, 624 N.W.2d 63, 69 - 70 (2001).

The Taxpayer testified that his leasehold interest is for a ten-year period, and had just over one-year to run as of the 2003 assessment date. The Taxpayer alleges that while the assessed value might be achieved if the property was on the market for a sufficient period of time, but he doesn't want his daughter to have to wait that long to receive the sale proceeds if something happened to the Taxpayer and his wife. The Taxpayer therefore testified that if he or his daughter had to sell the property within 60-days, the property would only bring \$65,000. (E11:1 - 3).

The definition of market value as defined by generally accepted appraisal practices does not provide a limitation on exposure on the open market. These professionally accepted practices require that "a reasonable time is allowed for exposure on the open market." *The Appraisal of Real Estate*, 12th Ed., The Appraisal Institute, 2001, p. 23. The overall concept of reasonable exposure encompasses not only adequate, sufficient and reasonable time, but also adequate, sufficient and reasonable effort. Exposure time is different for various types of real estate and value ranges and under various market conditions. *The*

Dictionary of Real Estate Appraisal, 4th Ed., The Appraisal Institute, 2002, p. 105.

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. 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).
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 Order setting the assessed value of the subject property for tax year 2003 is affirmed.

2. The Taxpayer's real property legally described as the leasehold interest in Lot 56, Horseshoe Lake, Cass County, Nebraska, and the improvements thereon shall be valued for purposes of taxation in the amount of \$81,409 for tax year 2003, as determined by the Board.
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 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).
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 I entered the above and foregoing Findings and Orders in this appeal on the 8th 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 9th day of September, 2004.

SEAL

Wm. R. Wickersham, Chair