

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

ROBERT K. CLEMENTS,)	
)	
Appellant,)	CASE NO. 02R-128 and 02R-129
)	
vs.)	FINDINGS AND ORDER
)	REVERSING THE DECISION OF THE
CASS COUNTY BOARD OF)	CASS COUNTY BOARD OF
EQUALIZATION,)	EQUALIZATION
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Robert K. Clements to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Tax Equalization and Review Commission's Hearing Room on the sixth floor of the State Office Building in the City of Lincoln, Lancaster County, Nebraska, on February 24, 2003, pursuant to a Notice and Order for Hearing issued December 17, 2002. Commissioners Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Robert K. Clements ("the Taxpayer") appeared at the hearing. Richard L. Clements appeared as counsel for the Taxpayer. The Cass County Board of Equalization ("the County Board") appeared through counsel, Nathan B. Cox, Esq., the County Attorney for Cass County Nebraska. The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by *Neb. Rev. Stat. § 77-5018* (Cum. Supp. 2002) 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 in this case follows.

**I.
STANDARD OF REVIEW**

The appellant, in order to prevail, is required to demonstrate by clear and convincing evidence that the decision of the County Board was incorrect and arbitrary or unreasonable. *Neb. Rev. Stat. § 77-5016(7)* (Cum. Supp. 2002 as amended Neb. Laws, L.B. 291 § 9). The presumption created by the statute can be overcome if the appellant shows by clear and convincing evidence that the County Board of Equalization either failed to faithfully perform its official duties or that the County Board of Equalization failed to act upon sufficient competent evidence in making its decision. *Garvey Elevators v. Adams County Bd.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). It is the appellant's burden to overcome the presumption with clear and convincing evidence of more than a difference of opinion. *Garvey Elevators v. Adams County Bd.*, 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 Board was unreasonable. *Garvey Elevators v. Adams County Bd.*, 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 residential real property described in the appeal in Case No. 02R-128 as a leasehold interest in and improvements on Lot 5 North Lake and in the appeal in Case No. 02R-129 as a leasehold interest in and improvements on Lot 8 North Lake, Cass County, Nebraska ("the subject property").
2. The actual or fair market value as of January 1, 2002, ("the assessment date") placed on the assessment roll for the leaseholds and improvements by the Cass County Assessor was:

a. Lot 5, North Lake

Land (leasehold)value	\$30,000.00	
Improvement value	<u>\$26,271.00</u>	
Total value	<u>\$56,271.00.</u>	(E1:2)

b. Lot 8, North Lake

Land (leasehold)value	\$46,294.00	
Improvement value	<u>\$23,083.00</u>	
Total value	<u>\$69,377.00.</u>	(E2:2)

3. The Taxpayer timely protested the County Assessor's values to the Cass County Board of Equalization. The Taxpayer proposed the following values:

a. Lot 5, North Lake

Land (leasehold) value	\$ 3,600.00	
Improvement value	<u>\$17,235.00</u>	
Total value	<u>\$20,835.00.</u>	(E1:2)

b. Lot 8, North Lake

Land (leasehold) value	\$ 3,600.00	
Improvement value	<u>\$18,209.00</u>	
Total value	<u>\$21,809.00.</u>	(E2:2)

4. The Cass County Board of Equalization determined that the actual or fair market values as of the assessment date were:

a. Lot 5, North Lake

Land (leasehold) value	\$21,000.00	
Improvement value	<u>\$35,271.00</u>	
Total value	<u>\$56,271.00.</u>	(E1:2)

b. Lot 8, North Lake

Land (leasehold) value	\$21,000.00	
Improvement value	<u>\$48,377.00</u>	
Total value	<u>\$69,377.00.</u>	(E2:2)

5. The Taxpayer timely filed appeals of the County Board decisions to the Commission.

6. The Cass County Board of Equalization was served with a Notice in Lieu of Summons, and duly answered that Notice.
7. Case No. 02R-128 was consolidated for hearing with Case No. 02R-129 by order of the Commission.
7. A Notice and Order for Hearing issued on December 17, 2002, set a hearing of the Taxpayer's appeal for February 24, 2003, at 3:00 P.M. CST.
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 subject property, described in Case No. 02R-128 is a leasehold interest in and improvements on Lot 5 North Lake and in Case No. 02R-129 a leasehold interest in and improvements on Lot 8 North Lake, Cass County, Nebraska, is owned by the Taxpayer.
2. The Taxpayer testified that the leasehold interests, in Lots 5 & 8, North Lake, are identical as set forth in Exhibit 13 excepting the lot description.
3. The leasehold interest described in Exhibit 13, provides that: The lease terminates December 31, 2033; Base rent of \$1,027.65 is to be adjusted periodically; Real estate taxes will be paid by the lessor up to \$11,000.00 aggregate for all lots at North Lake; Lessee is responsible for other

taxes including "personal property taxes" levied upon buildings and leasehold improvements; Lessee will pay a utility use fee on a pro rata basis with other leaseholders; Use of a lake subject to restrictions; Lessee grants a right of first refusal to lessor, in the event of a proposed sale of improvements; The leasehold interest is assignable subject to a right of first refusal and consent of the lessor which will not be unreasonably withheld; and a right to remove improvements at termination except those which are part of the land. (E13:1-19)

4. The Taxpayer testified that all leases at North Lake are substantively the same with some variation in rents due to multiple lot leases.
5. The Taxpayer testified that Forms 402 are on file with the Assessor advising that improvements on Lots 5 & 8, North Lake, are the property of the Lessee.
6. A Form 402 is required for assessment of improvements to the Lessee. 350 Neb. Admin. Code, ch. 10, §005.03, (07/02).
7. The Taxpayer testified that the residential improvement on Lot 5 North Lake is a mobile home. The Assessor agrees that the residential improvement is a mobile home.
(E53:7), (E65:2). An outbuilding is also on the lot.
(E3:2), (E53:6).

8. The improvements on Lot 8 North Lake are a residence and outbuildings. (E4:2) (E57:6&7).
9. The Taxpayer testified that the actual or fair market value of a leasehold interest in Lot 5, North Lake as of January 1, 2002 was \$30,000.00
10. The Taxpayer testified that the actual or fair market value of the leasehold and improvements on Lot 8, North Lake as of January 1, 2002, was \$70,000.00.
11. The Assessor's values for improvements on Lots 5 & 8 North Lake, are based on a sales study for the assessment year 2000. (E68:1).
12. The County Board's values for improvements on Lots 5 & 8, North Lake, are the result of a mathematical manipulation in which decreases in the value of the leasehold were added to improvement value. (E1:2), (E2:2).
13. The Taxpayer's values for improvements on Lots 5 & 8, North Lake, were calculated using Marshall and Swift for the manufactured home on Lot 5 and the dwelling on Lot 8 and the Assessor's values for other buildings. (E40:1), (E41:1).
14. The Taxpayer's determination of values for improvements does not take into account condition of the improvements. (E40:1), (E41:1).
15. Condition can affect the depreciation charged against a calculated replacement cost if depreciation is calculated by

dividing actual age by effective age. Actual age being the historical or chronological age and effective age the age indicated by the condition and utility of the building. *The Appraisal of Real Estate*, The Appraisal Institute, Twelfth Edition, 2001, p. 385.

16. The taxpayer's calculation of value for Lot 5 deducts 56% depreciation to arrive at a value for the manufactured home. The factors stated by the Taxpayer, effective age 30 years and economic life 45 years, indicate a depreciation factor of 66% ($30 \div 45 = .66$). (E40:1)
17. The 1975 porch on Lot 5 is assigned "deprec 27 years" and a "45 yr life". (E40:1). Depreciation of 40% is deducted. (E40:1). The calculated depreciation based on 27 years and a 45 year life is 60% ($27 \div 45 = .60$).
18. The dwelling on Lot 8 North Lake was assigned an effective age of 40 years and a life expectancy of 60 years in the Taxpayer's calculations. (E41:1). Depreciation calculated based on those factors would be 66% ($40 \div 60 = .66$). Depreciation deducted is 47%. (E41:1).
19. A leased fee interest is the lessor's or landlord's interest. *The Appraisal of Real Estate*, The Appraisal Institute, Twelfth Edition, 2001, p. 81.
20. "The valuation of a leased fee interest is best accomplished using the income capitalization approach. ... The benefits

that accrue to an owner of a leased fee estate generally consist of income throughout the lease and the reversion at the end of the lease." *Id.* p. 81 and 82.

21. A leasehold estate is the lessee's or tenant's estate. *Id.* 83.
22. "A leasehold interest may have value if contract rent is less than market rent, creating a rental advantage for the tenant." *Id.* p. 83.
23. "In mass appraisal, property is usually valued on an unencumbered fee simple basis, with appraised values for income properties based on market rents." *Mass Appraisal of Real Property*, Robert J. Gloudenmans, International Association of Assessing Officers, (1999) p. 260.
24. "Existing leases written at rates favorable to the owner command value and can be expected to increase sales prices, provided that tenants can sustain the payments. Leases written at below-market rates reduce value and usually result in lower sales prices." *Id.* p. 260.
25. "Sales prices for properties with assumed leases at nonmarket rents should be adjusted to a market basis. ... The amount of the adjustment for an assumed lease is calculated by capitalizing the difference between the market and contract rents." *Id.* p. 260 and 261.

26. Real property is defined as "(1) All land; (2) All buildings, fixtures, and improvements; (3) Mobile homes, cabin trailers, and similar property, not registered for highway use, which are used, or designed to be used for residential, office, commercial, agricultural, or similar purposes, but not including mobile homes, cabin trailers, and similar property when unoccupied and held for sale by persons engaged in the business of selling such property when such property is at the location of the business; (4) Mines, minerals, quarries, mineral springs and wells, oil and gas wells, overriding royalty interests, and production payments with respect to oil and gas leases; and (5) All privileges pertaining to real property described in subdivisions (1) through (4) of this section." *Neb. Rev. Stat. § 77-103 (Cum. Supp. 2002)*.
27. Privileges pertaining to real property means "the right to sell, lease, use, give away, or enter and the right to refuse to do any of these. All rights may or may not be vested in one owner or interest holder." 350 Neb. Admin. Code, ch. 10, §001.01F (07/02).
28. The values placed on leasehold interests at North Lake by the Assessor for tax year 2002 are shown in Exhibit 68. The values shown range from \$3,616 for Lot 58 to \$86,080.00 for Lot 26.

29. Leasehold values as determined by the Assessor are either:
1) the difference between a previously determined value for lots and improvements based on sales in an appraisal for the assessment year 2000 and the depreciated value of improvements; or 2) an average of the values assigned to leasehold interests calculated by the first method. (E68:1)
30. Leasehold estates had not been valued separately by the Assessor prior to the tax year 2002. (E68:1)
31. The Taxpayer testified that each leaseholder protesting the proposed value of a leasehold for the year 2002 had a value of \$21,000.00 assigned to the leasehold interest by the Cass County Board of Equalization.
32. Exhibit 1 page 2 shows that in the Taxpayer's instance that the resulting decrease in the assessed or taxable value of leasehold interest for Lot 5, North Lake, \$9,000.00, ($\$30,000.00 - \$21,000.00$) was added to the improvement value ($\$26,228.00 + \$9,000.00 = \$35,228.00$). The value of the outbuildings was not affected. (E1:2)
33. Exhibit 2 page 2 shows that in the Taxpayer's instance the resulting decrease in the assessed or taxable value of the leasehold interest for Lot 8, North Lake, \$15,294.00, ($\$46,294.00 - \$21,000.00$) was added to the improvement value ($\$20,362.00 + \$15,294.00 = \$45,656.00$). The value of the outbuildings was not affected. (E2:2).

34. The result after County Board action was that the assessed or taxable value of the leasehold (land) for each of the Taxpayers's lots plus improvements remained at the level determined by the Assessor. (E1:2), (E2:2).
35. The assessed or taxable value assigned by the Assessor to the leased fee interest for each lot at North Lake regardless of rents or size was \$3,500.00 for the tax year 2002. (E14:1).
36. The County Board had evidence before it on or before July 23, 2002, the date it established the actual or fair market value of Taxpayer's leasehold interest at \$21,000.00, that the value of the leased fee interest for each lot at North Lake had an actual or fair market value of \$14,000.00. (E:68:2 & E69:4).
37. The County Board is obligated by law to equalize values. Neb. Rev. Stat. § 77-1501 (Cum. Supp. 2002).
38. The County Board is authorized to adjust the value of undervalued property by giving notice of a proposed change in valuation to the owner prior to July 25 each year. Neb. Rev. Stat. § 77-1504 (Cum.Supp. 2002).
39. The actual or fair market value of a leased fee interest for a lot at North Lake during tax year 2002 as established by a study for the County Board was \$14,000.00. (E66:2)

40. The assessed or taxable value of a leased fee interest for a lot at North Lake was not adjusted for the tax year 2002 by the County Board so that assessed or taxable value equaled the actual or fair market value of a leased fee interest.
(E14).
41. The ratio of assessed value for each leased fee interest in North Lake for the tax year 2002 to its actual or fair market value was 25% ($\$3,500.00 \div \$14,000.00 = .25$).
42. The equalized value subject to taxation for Taxpayer's leasehold interest in Lots 5 & 8 North Lake and the improvements on the lots is 25% of actual or fair market value for the tax year 2002.
43. The Taxpayer has adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the County Board.
44. The Taxpayer did not adduce clear and convincing evidence that the actual or fair market values assigned to the leaseholds improvements and outbuildings by the Assessor were unreasonable or arbitrary.
45. Based on the entire record before it, the Commission finds and determines that the actual or fair market value as of the assessment date for the tax year 2002 is:
 - a. Lot 5, North Lake

Land (leasehold) value	\$21,000.00
Improvement value	<u>\$26,271.00</u>
Total value	<u>\$47,271.00.</u>

b. Lot 8, North Lake

Land (leasehold) value	\$21,000.00
Improvement value	\$23,083.00
Total value	<u>\$44,083.00.</u>

46. A factor of 25% must, however be applied to the actual or fair market value of the subject property to determine its assessed or taxable value because the assessed or taxable value of the leased fee in the subject property is 25% of its actual or fair market value.
47. The equalized assessed or taxable value of the residential real property described in the appeal as leasehold interest in and improvements on Lot 5, North Lake for the tax year 2002 is:

Land	\$ 5,250.00
Improvements	<u>6,568.00</u>
Total	<u>\$11,818.00.</u>

48. The equalized assessed or taxable value of the residential real property described in the appeal as leasehold interest in and improvements on Lot 8, North Lake for the tax year 2002 is:

Land	\$ 5,250.00
Improvements	<u>5,771.00</u>
Total	<u>\$11,021.00.</u>

49. The assessed or taxable value of the subject property as of the assessment date determined by the County Board is not supported by the evidence.
50. The decision of the County Board was incorrect, arbitrary and unreasonable.
51. The decision of the County Board should be vacated and reversed.

**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 Board 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. Neb. Rev. Stat. § 77-5016(3) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291 § 9).

4. 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. 2002, as amended by 2003 Neb. Laws, L.B. 291 § 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 Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).
5. 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).

6. 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).
7. "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).
8. 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).

9. "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 (Neb. 1991).
10. 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).
11. "Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that no one part is compelled to pay a disproportionate share of the tax. Where it is impossible to secure both the standards of the true value of a property for taxation and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate

purpose of the law. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. However, 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).

12. Where "the discrepancy was not the result of an error of judgment but was a deliberate and intentional discrimination systematically applied" the Taxpayer's right to relief is clear. "The right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law." *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984).

13. Properly adopted rules and regulations have the force and effect of law. *Alexander v. J. D. Warehouse*, 253 Neb. 153, 568 N.W.2d 892 (1997).
14. If real property is subject to a long term lease the aggregate of the actual or fair market value of the leased fee interest and the actual or fair market value of the leasehold interest should not be less than the actual or fair market value of the fee interest. *Omaha Country Club v. Douglas County Board of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).

IV DISCUSSION

The Taxpayer's assertions with regard to assessment of the leasehold and improvements on Lots 5 & 8, North Lake are both that the actual or fair market values determined by the County Board are excessive and that the resulting values were not equalized with other real property.

Prior to tax year 2002, the Assessor had not assigned a separate value to leasehold interests in lots at North Lake. (E68:1). Three approaches to the separate valuation of leasehold interests and improvements on the leaseholds at North Lake were used in Cass County for the tax year 2002. Two approaches were used by the Assessor to set initial values. A third approach was used by the County Board as it heard protests. County Board

adjustments to leasehold values were offset by compensating changes to the values assigned to improvements. The details of Assessor and County Board action follow.

The Assessor determined values for leasehold interests in lots at North Lake for the year 2002 in two different ways. The first group of lots, consisting of those which were vacant, and those whose improvements had been valued using depreciated cost, were valued based on the average difference between depreciated cost and a market analysis of lot values. (E68:1). Lots with improvements valued at depreciated cost were those with mobile homes, sheds, or garages. (E68:1). Depreciated cost had been determined for all improvements on leased lots at North Lake as part of a reappraisal performed in 1999 and implemented in 2000. (E68:5 & 6). The value determined for the leasehold interest in a vacant lot or a lot with improvements valued at depreciated cost was \$30,000.00.

All remaining leasehold interests in lots at North Lake were assigned a value which was the difference between the depreciated cost of improvements and market value for the tax year of 2000 of both the leasehold interest and improvements (updated for additional improvements). (E68:1-6) The range of values for leasehold interests at North Lake determined using the second method ranged from \$3,616 for Lot 58 to \$86,080 for Lot 26. (E68:2 & 3).

After determining values for the leasehold interests in all Lots at North Lake for the year 2002 using two different methods, the Assessor determined the aggregate value of leasehold interests and improvements for the year 2002 at North Lake in two different ways. The first method was to add a new component of value, "land" (leasehold interest), assign a value of \$30,000.00 to that component, and add the prior year's improvement value. (E68:1). The result was a \$30,000.00 increase in value over the prior year. That method was used for vacant lots and lots whose improvements had been valued at depreciated cost. (E68:1). The second method for determining value involved several steps. The first step was to add a new component of value, "land" (leasehold interest), assign a value to it derived from subtraction of the depreciated cost of improvements from market value. Next the Assessor subtracted the value of the leasehold interest from the prior year's value for improvements. Outbuilding value was not adjusted. Finally the values of all components leasehold, improvements, and outbuildings were added together for the aggregate or total value. The result for lots in the second group was no change from the prior year's aggregate value.

The value of the Taxpayer's leasehold interest in Lot 5 placed on the assessment rolls by the Assessor for tax year 2002 was \$30,000.00. (E1:2). The value of the Taxpayer's leasehold

interest in Lot 8 placed on the assessment rolls by the Assessor for the tax year 2002 was \$46,294.00. (E2:2).

The County Board, as it considered protests of 2002 assessed values for leasehold interests, had available a land study of similar sandpit lake lot sales. (E66:1 & E69). The County Board used this study as the basis for a third method of valuation of leasehold interests at North Lake for the tax year 2002. The study is the third method used to value leasehold interests at North Lake for the tax year 2002. As indicated by the study the market value for a fee interest in lots at North Lake was \$35,000.00. (E66:1). The County Board utilized a rate of return of 10% to determine a "market rent" of \$3,500.00. (E66:2). The difference between "market rent", \$3,500.00, and the "actual rent", \$1,400.00, assumed to be due under the lease over the life of the lease was calculated. (E66:2). The difference between the rent paid and the calculated market rent was determined to be \$2,100.00. (E66:2). That amount was capitalized at 10% suggesting a leasehold value of \$21,000.00 for each lot. Other calculations were made suggesting different values, \$26,092.00 and \$32,541.00, for a leasehold interest. (E66:2). The indicated value for the leased fee, capitalizing actual rent of \$1,400.00 at 10% was \$14,000.00 (E66:2). The County Board assigned a leasehold value of \$21,000.00 to Lots 5 and 8 of North Lake for the year 2002. (E1:2 & E2:2). The sum

of the leased fee and the leasehold at those values equaled the indicated actual or market value of a fee interest, \$35,000.00. (E66:2), (E69:4).

The County Board did not, however, confine its actions to adjustments of the leasehold value for Lots 5 and 8, North Lake. The County board adjusted values for the improvements on Lots 5 & 8, North Lake as well. The increase made to improvement value on Lots 5 & 8 North Lake equaled the decrease in the value assigned to the leasehold interest for each lot. Aggregate value for the two components for each of the lots were unchanged from the Assessor's aggregate. (E1:2 & E2:2).

The aggregate of land and improvements is the value of real property that is to be considered for equalization purposes. *Bumgarner v. County of Valley*, 208 Neb. 361, 303 N.W.2d 307 (1981).

The Assessor had valued each leased fee interest at \$3,500.00 for the tax year 2002. (E:14)

After County Board action the total assessed or taxable value assigned to the leased fee (\$3,500.00) and the leasehold interest (\$21,000.00) for Lot 8, North Lake was \$24,500.00, while the indicated actual or fair market value for the fee interest for a the lot was \$35,000.00. The ratio of assessed or taxable value to actual or fair market value for the fee interest in Lot 8, North Lake was 1.3226 ($\$46,294.00 \div \$35,000.00$). The assessed

or taxable value of the fee interest in Lot 58 however would have remained at \$7,115.00 (\$3,500.00 plus \$3,616.00). (E68:3) The ratio of assessed or taxable value to actual or fair market value for Lot 58 is .2033 ($\$7,115.00 \div \$35,000.00$). If Lot 26 is considered the assessed or taxable value of a fee interest in Lot 28 would have been \$89,580.00 (\$86,080.00 plus \$3,500.00). (E68:1) The ratio of assessed or taxable value to actual or fair market value for Lot 26 is 25.5943 ($\$89,580.00 \div \$3,500.00$). The combined assessed or taxable values for leasehold and leased fee interests set forth above for North Lake lots were clearly not equalized by the County Board action when compared with the \$35,000.00, actual or fair market value of each lot.

A uniform tax rate applied to uniform and proportionate values, however they are determined, insures that no taxpayer similarly situated, bears a disproportionate share of taxes. Achievement of that objective is the purpose of equalization. *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 588 N.W.2d 190 (1999). "The burden is on the Taxpayer to show by clear and convincing evidence that the valuation placed on other similar property is grossly excessive." *Cabela's, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999). The actual or fair market value of a leased fee interest in a lot at North Lake was by the County Board's evidence \$14,000.00. (E66:2). The assessed or taxable

value of a leased fee interest in a lot at North Lake was \$3,500.00. (E14:1). The ratio of assessed or taxable valuation to actual or fair market value is 25% ($\$3500.00 \div \$14,000.00$). The constitution requires that values be determined proportionately even if the proportionate value is less than actual or fair market value. *Scribante, supra*. There is proof in this case that the proportion of actual or fair market value of a leased fee interest of a lot at North Lake to the assessed or taxable value of a lot at North Lake in the year 2002 was 25%. The Taxpayer is entitled to valuation of his interest in the subject property for purposes of taxation at the same level.

The Taxpayer's evidence concerning the actual or fair market value of improvements on Lots 5 & 8 North Lake contained what appeared to be calculation errors and did not take into consideration all factors necessary to arrive at a credible value.

**V.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the order of the Cass County Board of Equalization setting the assessed value of the subject property for the assessment date, January 1, 2002, is vacated and reversed.
2. That the actual or fair market value of the residential real property described in the appeal as leasehold interest in

and improvements on Lot 5, North Lake, is as of the assessment date of January 1, 2002, \$47,271.00.

3. That the actual or fair market value of the residential real property described in the appeal as leasehold interest in and improvements on Lot 8, North Lake, is as of the assessment date of January 1, 2002, \$44,083.00.
4. That the equalized assessed or taxable value of the residential real property described in the appeal as leasehold interest in and improvements on Lot 5, North Lake and leasehold in and improvements on Lot 8, North Lake, Cass County, Nebraska, subject to taxation for the tax year 2002 is 25% of actual or fair market value.
5. That the equalized assessed or taxable value of the residential real property described in the appeal as leasehold interest in and improvements on Lot 5, North Lake shall be for the tax year 2002:

Land	\$ 5,250.00
Improvements	<u>6,568.00</u>
Total	<u>\$11,818.00.</u>

6. That the equalized assessed or taxable value of the residential real property described in the appeal as leasehold interest in and improvements on Lot 8, North Lake shall be for the tax year 2002:

Land	\$ 5,250.00
Improvements	<u>5,771.00</u>
Total	<u>\$11,021.00.</u>

7. That this decision, if no appeal is timely filed, shall be certified to the Cass County Treasurer, and the Cass County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2002).
8. That any request for relief, by any party, which is not specifically provided for by this order is denied.
9. That each party is to bear its own costs in this matter.
10. That this decision shall only be applicable to tax year 2002.
11. This order is effective for purposes of appeal July 8, 2003.

IT IS SO ORDERED.

Dated: July 8, 2003.

Wm. R. Wickersham, Vice-Chair

Susan S. Lore, Commissioner

Robert L. Hans, Commissioner

SEAL