

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

BOMGAARS SUPPLY, INC.,)	
)	
Appellant,)	CASE NO. 03C-277
)	
vs.)	
)	
DODGE COUNTY BOARD OF)	FINDINGS AND ORDER
EQUALIZATION, and)	
)	
JAMES MESENBRINK,)	
)	
Appellees.)	

Appearances:

For the Appellant: Michele M. Lewon, Esq.
P.O. Box 3527
Sioux City, IA 51102

For Appellee the Stacey Hultquist, Esq.
Dodge County Deputy Dodge County Attorney
Board of P.O. Box 147
Equalization: Fremont, NE 68025

For Appellee James Mesenbrink: No Appearances.

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

**I.
STATEMENT OF THE CASE**

Bomgaars Supply, Inc., the Taxpayer in this appeal, leases an improved 2.82 acre tract of land legally described as Tax Lot 97, in Section 12, Township 17, Range 8, Dodge County, Nebraska. (E5:1). The tract of land is improved with a commercial building used for retail sales. The State Assessing Official for Dodge County determined that the actual or fair market value of the Taxpayer's real property was \$646,000 as of the January 1, 2003,

assessment date. (E5:1). The Taxpayer timely filed a protest of that determination and alleged that the actual or fair market value of the property be reduced. (E22). The Dodge County Board of Equalization ("the Board") denied the protest. (E1:1).

The Taxpayer filed an appeal of the Board's decision on August 25, 2003. The Commission served a Notice in Lieu of Summons on the Board which the Board answered. The Commission served an Order for Hearing and Notice of Hearing 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 January 29, 2004. Jane Bomgaars, Vice President of Bomgaars Supply, Inc., appeared at the hearing on behalf of the Appellant. Bomgaars Supply, Inc. also appeared through counsel, Michele Lewon, Esq.. The Dodge County Board of Equalization appeared through Stacey Hultquist, Deputy Dodge County Attorney.

II. ISSUES

The issues before the Commission are (1) whether the provisions of Neb. Rev. Stat. §77-1502 (2003 Supp.) requiring a protest be filed in triplicate is jurisdictional; (2) whether the Board's decision concerning the value of the land component of the subject property was incorrect and either unreasonable or

arbitrary; and (3) if so, whether the Board's value for the land component 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. X77-5016(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 Taxpayer failed to adduce any evidence of actual or fair market value for the land component of the subject property.

2. The Board's Referee recommended that the State Assessing Official's proposed value be reduced. The Board declined to accept that recommendation.
3. The Board rested without adducing any evidence.

V.
ANALYSIS

The Board's Referee, based on sales data analyzed using "Front Foot" analysis, recommended that the subject property be valued at \$461,645. (E2:1). The Board's Referee allocated \$234,240 of this value to the land component, and \$227,405 to the improvement component. (E2:1).

The Taxpayer contends that the Board's failure to accept its Referee's recommendation is clear and convincing evidence that the Board's decision was incorrect and either unreasonable and arbitrary. The Taxpayer failed to adduce any statutory or other legal precedent supporting this position.

The Taxpayer also failed to adduce any evidence of actual or fair market value. Based upon the applicable law, the Board need not put on any evidence to support its value of the property at issue unless the taxpayer establishes the Board's value was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998). The Board's decision must therefore be affirmed.

VI.
CONCLUSIONS OF LAW

1. The provision of Neb. Rev. Stat. §77-1502 (2003 Supp.) requiring a protest be filed in triplicate is not jurisdictional. The statute specifically provides that if the reasons for the protest are not listed, the protest shall be dismissed. There is no provision requiring dismissal if the protest is not filed in triplicate. "In discerning the meaning of a statute, a court must determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense, as it is the court's duty to discover, if possible, the Legislature's intent from the language of the statute itself. In the absence of anything to the contrary, statutory language is to be given its plain and ordinary meaning; an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous." *Burlington Northern and Santa Fe Railroad Co. v. Chaulk*, 262 Neb. 235, 243, 631 N.W.2d 131, 138 (2001). Furthermore, special statutory provisions control and take precedence over a general statutory provisions, because the special provision is a specific expression of legislative will concerning a particular subject. See, e.g., *Kratochvil v. Motor Club*

Ins. Ass'n., 255 Neb. 977, 986, 588 N.W.2d 565, 573 (Neb. 1999). Applying these rules to the plain language of the statute, the requirement that the protest be filed in triplicate is not jurisdictional.

2. The Commission has jurisdiction over the Parties and over the subject matter of this appeal.
3. 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).
4. 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 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 on the Taxpayer. *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).

5. The Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998).
6. The Board's decisions must be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The order of the Dodge County Board of Equalization setting the assessed value of the subject properties for tax year 2003 is affirmed.
2. The Taxpayer's real property legally described as Tax Lot 97, in Section 12, Township 17, Range 8, in Dodge County, Nebraska, more commonly known as 1830 East 23^r^d Street in the City of Fremont, shall be valued as follows for tax year 2003:

Land	\$418,615
Improvements	\$227,405
Total	\$646,020
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 Dodge County Treasurer, and the State Assessing Official

for Dodge County, 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 Wickersham made and entered the above and foregoing Findings and Orders in this appeal on the 29th day of January, 2004. The same were approved and confirmed by Commissioners Lore and Reynolds. Commissioner Hans, however, dissented. Since a majority of the Commission approved and confirmed the Findings and Orders, those are deemed to be the Finding and Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (2003 Supp.).

Signed and sealed this 30th day of January, 2004.

SEAL



Wm. R. Wickersham
Wm. R. Wickersham, Chair