

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

WILLIAM D. KNOELL,)	
)	
Appellant,)	CASE NO. 03R-3
)	03R-4
vs.)	
)	
DODGE COUNTY BOARD OF)	FINDINGS AND ORDER
EQUALIZATION,)	
)	
Appellee.)	

Appearances:

For the Appellant: William D. Knoell
2050 North County Road 18
Fremont, NE 68025

For the Appellee: Stacey Hultquist
Deputy Dodge County Attorney
P.O. Box 147
Fremont, NE 68026

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

**I.
STATEMENT OF THE CASE**

William D. Knoell, the Taxpayer in Case Number 03R-3, owns a 72-acre tract of unimproved agricultural land legally described as Tax Lot 105, in Section 24, Township 17, Range 6, Dodge County, Nebraska. (E17:1). The State Assessing Official for Dodge County ("the State Assessing Official") determined that the actual or fair market value of the real property was \$77,400 as of the January 1, 2003, assessment date. (E1:1). The Taxpayer timely filed a protest of that determination and alleged that the actual or fair market value of the property was \$14,400. (E1:2). The Dodge County Board of Equalization ("the Board") denied the

protest. The Taxpayer filed an appeal of the Board's decision on August 1, 2003.

The Taxpayer owns another tract of land which is the subject of the appeal in Case Number 03R-4. This 53.6-acre tract of improved land is legally described as Tax Lot 100, in Section 23, Township 17, Range 6, Dodge County, Nebraska. (E33:1). The State Assessing Official determined that the actual or fair market value of the land component was \$57,620 as of the assessment date. (E33:3). The State Assessing Official determined that the actual or fair market value of the improvement component was \$49,150. (E33:2). The State Assessing Official's determination of value totaled \$106,770. (E33:1). The Taxpayer timely filed a protest of that determination and alleged that the actual or fair market value of the land component was \$11,720, property was \$8,915. (E2:2). The Board granted the protest in part and determined the actual or fair market value of the improvement was \$15,155, but denied the protest as to the land component. (E2:1). The Taxpayer appealed this decision on August 1, 2003.

The Commission served a Notice in Lieu of Summons on the Board in each appeal, which the Board answered. The Commission thereafter consolidated the appeals for purpose of hearing, and 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 appeals in the City of Lincoln, Lancaster County, Nebraska, on January 29, 2004. William D. Knoell appeared personally at the hearing. The Board appeared through Stacey Hultquist, Deputy Dodge County Attorney.

The Parties, during the course of the hearing, stipulated and agreed that the property was properly classified as "recreational" property.

II. ISSUES

The issues before the Commission are (1) whether the Board's decision 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. 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 land component of the Taxpayer's real property is located between the banks of the Platte River in Dodge County, Nebraska.
2. The property is used for recreational purposes.
3. The owner's opinion of actual or fair market value is \$200 per acre for the land component, and \$10,000 for the cabin. The Taxpayer adduced no evidence of the sale of comparable properties in support of this opinion.
4. The Board failed to adduce any opinion of value for the subject properties.

V.
ANALYSIS

A.
VALUE OF THE LAND

The Taxpayer's land is located on Poll Island, also known as Hartman Island. The island is located in the Platte River in Dodge County, Nebraska. State law provides this land is a Nebraska State Game Refuge. Neb. Rev. Stat. §37-706(2)(a) (Cum. Supp. 2002). State law does not prohibit the use of State Game property as recreational property. Neb. Rev. Stat. §37-708 (4) (Reissue 1998).

The State Assessing Official valued the Taxpayer's land as "recreational land." "Recreational land" is defined as "all parcels of real property used or intended to be used for diversion, entertainment, and relaxation on an occasional basis. Some of the uses would include fishing, hunting, camping, boating, hiking, picnicking, and the access or view that simply allows relaxation, diversion and entertainment. A building designed for year round living shall not be categorized as recreational." Title 350, Neb. Admin. Code, ch. 10, §001.05E (04/03).

The Taxpayer requested that the land component be valued as "waste land." "Waste land" is defined as "those land types that cannot be used economically and are not suitable for recreational or agricultural use or production." Title 350, Neb. Admin. Code,

ch. 14, §002.53 (07/02). The Taxpayer's property cannot legally be classified as "waste land."

The Board adduced evidence of "comparable properties." (E20 - E32). When considering the land component of real property, "comparable" properties must share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location. *Property Assessment Valuation*, ^{2^d} Ed., International Association of Assessing Officers, 1996, p. 70 - 76. 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." *Id.* at 76. The Board adduced uncontroverted testimony that based on these "comparable" properties all "recreational land" within the County was valued at \$1,075 per acre.

However, the Board failed to adduce any opinion of value for the subject property. The Board's "comparables" include sales from 1999 and sales from 2002. Three of the sales, found at Exhibits 26, 28, and 31, sold for \$1,526 per acre, \$865 per acre, and \$831 per acre, respectively. The median of these sales, which occurred closest to the assessment date, was \$865 per acre.

The Board's determination of value for the land component of the subject properties must accordingly be vacated and reversed.

B.
VALUE OF THE CABIN

The subject property in Case Number 03R-4 includes a cabin approximately 840 square feet in size which was built in 1988. (E33:2). The Board valued the property using the Cost Approach. The inventory of physical characteristics alleges that the cabin has "100% forced air" heating, and 7 plumbing fixtures. These characteristics impact actual or fair market value. The uncontroverted evidence establishes that forced air heating requires electrical service. There is no electrical service to the property. The Taxpayer's uncontroverted evidence establishes that there is one "pump" water faucet in the cabin, which drains to the land outside of the cabin. There is no septic system or sewer system.

There is no evidence that the State Assessing Official inspected the property for tax year 2003. "Where the county assessor does not act upon his own information, or does not make a personal inspection of the property, any presumption as to the validity of the official assessment does not obtain." *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 580, 144 N.W.2d 161, 169 (1966).

The State Assessing Official testified that errors appeared in the cabin inventory (E33:2) and that those errors would affect the value determined by the Board for that improvement. These errors would also result in a reduction in actual or fair market value.

The Board's determination of value (\$15,155) is incorrect and unreasonable or arbitrary. The owner testified that the actual or fair market value of the cabin was \$10,000. 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). The Board's determination of value for the cabin must be vacated and reversed.

**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 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. 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).

4. 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).
5. "Where the county assessor does not act upon his own information, or does not make a personal inspection of the property, any presumption as to the validity of the official assessment does not obtain." *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 580, 144 N.W.2d 161, 169 (1966).
6. The Board's decisions must be vacated and reversed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Dodge County Board of Equalization's decisions setting the assessed value of the subject properties for tax year 2003, are vacated and reversed.
2. The Taxpayer's real property in Case Number 03R-3, legally described as Tax Lot 105, in Section 24, Township 17, Range 6, Dodge County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$62,280
Improvements	\$ -0-
Total	\$62,280
3. The Taxpayer's real property in Case Number 03R-4, legally described as Tax Lot 100, in Section 23, Township 17, Range 6, Dodge County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$46,364
Improvements	\$10,000
Total	\$56,364
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 Dodge County Treasurer, and the State Assessing Official

for Dodge County, pursuant to Neb. Rev. Stat. §77-5016(7) (2003 Supp.).

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 Lore made and entered the above and foregoing Findings and Orders in this appeal on the 29' day of January, 2004. The same were approved and confirmed by Commissioners Wickersham and Hans 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 30" day of January, 2004.

SEAL




Wm. R. Wickersham, Chair