

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

JANE SWEARINGEN and WILLIAM)	
SWEARINGEN,)	
)	CASE NO. 03R-43
Appellants,)	
)	
vs.)	FINDINGS AND
)	FINAL ORDER DENYING RELIEF
CASS COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

Appearances:

For the Appellant: William P. Swearingen
1211 Garfield Street
Lincoln, NE 68502

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**

Jane Swearingen and William Swearingen ("the Taxpayers") have a leasehold interest in a tract of land legally described as Lot 18, North Lake, Cass County, Nebraska. (E3:1). The tract of land is improved with a 1,600 square-foot, one-and-a-half story recreational home built in 1948. (E3:3). The Cass County Assessor ("the Assessor") determined that the property's actual or fair market value was \$87,015 as of the January 1, 2003, assessment date. (E1:2). The Taxpayer timely filed a protest of that determination and alleged that the property's actual or fair

market value was \$15,000. (E1:1). The Cass County Board of Equalization ("the Board") granted the protest in part, and determined that the subject property's actual or fair market value was \$78,268 as of the assessment date. (E1:1). The Taxpayer appealed the Board's decision on August 14, 2003.

The Commission served a Notice in Lieu of Summons on the Board which the Board answered. 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, and Reynolds heard the appeal. Commissioner Wickersham was excused from the proceedings. 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 opinion of value is approximately \$60,000 as of the assessment date.
2. The Taxpayer adduced no other evidence of value.

**V.
ANALYSIS**

The Taxpayer testified that the subject property's actual or fair market value was approximately \$60,000. The Taxpayer adduced no other evidence of value. 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 Supreme Court has held that a difference of opinion is insufficient to overcome the statutory presumption. *U.S. Ecology, supra*. Finally, in the valuation of real property for tax purposes the critical issue is the actual value of the entire property, not the proportion of that value which is allocated to the individual components. *Bumgarner v. Valley County*, 208 Neb. 361, 366 - 367, 303 N.W.2d 307,311 (1981).

There is no clear and convincing evidence that the Taxpayer's property's assessed value, taken as a whole, exceeds actual or fair market value. Based upon the applicable law, 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 [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, as amended by 2004 Neb. Laws, L.B. 973, §51). The Board's decision must accordingly be affirmed.

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. 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 18, North Lake, Cass County, Nebraska, and the improvements thereon shall be valued for purposes of taxation in the amount of \$78,268 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 Commissioner Hans entered the above and foregoing Findings and Orders in this appeal on the 9th day of September, 2004. The same were approved and confirmed by Commissioners 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 10th day of September, 2004.

SEAL

Mark P. Reynolds, Vice-Chair