

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Delbert G. Stueven,
Appellant,

v.

Sherman County Board of Equalization,
Appellee.

Case No: 11R-010

Order Affirming the Decision of the
Sherman County Board of Equalization

For the Appellant:

Larry W. Beucke,
Parker, Grossart, Bahensky,
Beucke, and Bowman, L.L.P.

For the Appellee:

Mark L. Eurek,
Sherman County Attorney

Appeal heard before Commissioners Robert W. Hotz and Thomas D. Freimuth.

I. THE SUBJECT PROPERTY

The Subject Property consists of improvements on leased public lands.¹ It is a residential parcel located in Sherman County, at Sherman Lake. The parcel is improved with a 768 square foot one-story home, built in 1966, and a 675 square foot Utility Quonset, built in 2003. The property record card for the Subject Property is found at Exhibit 3.

II. PROCEDURAL HISTORY

The Sherman County Assessor (Assessor) determined that the assessed value of the Subject Property was \$76,030 for tax year 2011, including \$37,500 for leasehold value and \$38,530 for improvements.² Delbert G. Stueven (Taxpayer) protested this assessment June 14, 2011 to the Sherman County Board of Equalization (County Board) and requested a valuation of \$54,665, including \$37,500 for leasehold value and \$17,165 for improvements.³ The County Board

¹ Improvements on leased public lands are to be assessed as real property together with the value of the leasehold. Neb. Rev. Stat. § 77-1374.

² Exhibit 2:1.

³ Exhibit 2:1.

determined that the taxable value for tax year 2011 was \$76,545, including \$37,500 for leasehold value and \$39,045 for improvements.⁴

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The parties stipulated to the receipt of exchanged Exhibits and also stipulated that the leasehold value was not in dispute. The Commission held the hearing on May 17, 2012.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is *de novo*.⁵ When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."⁶

That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, 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.⁷

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁸ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁹

⁴ Exhibit 2:1. Subsequent to the Taxpayer's protest filing, the Assessor and two members of the County Board inspected the Subject Property. A correction identified during this inspection increased basement square footage, which in turn raised the taxable value of the improvements.

⁵ See, Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.), *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁶ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁷ *Id.*

⁸ Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

⁹ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹⁰ The County 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.¹¹

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”¹² The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”¹³

IV. VALUATION

A. Law

Under Nebraska law,

[a]ctual value is 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 a 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. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹⁴

"Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach."¹⁵ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁶ Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning

¹⁰ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

¹¹ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹² Neb. Rev. Stat. §77-5016(8) (2011 Supp.).

¹³ Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

¹⁴ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁵ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁶ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

as assessed value.¹⁷ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁸ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁹

B. Summary of the Evidence

The leasehold value of the parcel is not in dispute. The Taxpayer asserts that the taxable value of the improvements, as determined by the County Board, exceed market value.

Delbert Stueven testified that the improvements consist of a cabin and a utility Quonset. He testified that the cabin was built in 1966 from recycled building materials that were originally used between 1900 and 1910. He explained that the basement was added sometime after the 1966 construction of the cabin. Stueven testified that the roof and siding had been installed new sometime after 1966. He further testified that he constructed the Quonset in 2003, again using recycled materials.

Regarding the condition of the cabin, Stueven explained that the roof and siding had been damaged by hail, and had not been repaired. He testified that the cabin is subject to water damage as a result of a rain spillway in the vicinity of the Subject Property which overflows and sends water down a nearby unpaved road. As a result, Stueven explained, the cabin had no operating heat or air conditioning as of January 1, 2011, because spillway water that had entered into the basement had ruined two furnaces. He testified that the water has, at times, run one foot deep, and that it often enters the basement. Stueven testified that as a result of spillway water entering the basement, dirt has collected and mold has appeared in the basement and crawl space. He also testified that the Subject Property has significant deferred maintenance, including the Quonset structure, as well as the cabin having broken and boarded up windows and water damage.

The Taxpayer offered numerous photographs of the Subject Property which he asserted illustrated the condition of the Subject Property as of January 1, 2011. Exhibit 14 consists of photocopies of 48 photographs which Stueven testified depicted the inferior condition of the Subject Property, including water damage in the basement, window disrepair, window rot, and boarded up windows in the cabin, as well as leaks and roof damage to the Quonset. He also

¹⁷ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁸ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

testified that the photographs in Exhibit 14 depict the ground slope of the Subject Property which negatively affects the improvements by increasing water damage, and negatively impacts the general condition of the Subject Property.

Regarding his use of the Subject Property, Stueven testified that it is used for recreational purposes, and that he does not stay overnight. He testified that in his opinion the cabin was uninhabitable. Stueven gave his opinion of value of the improvements at \$3,000 (cabin \$0, and Quonset \$3,000).

Gene Graves, a licensed auctioneer and real estate broker, testified on behalf of the Taxpayer. At the time of the hearing, Graves was not a licensed appraiser, and had held a real estate broker's license for two years. Graves testified that he personally walked through the Subject Property on October 17, 2011. He testified that the Subject Property had several inferior characteristics which he felt would negatively affect the market value of the Subject Property, including rotting windows that needed replacement, a kitchen in very poor condition, water damage to the basement and crawl space, and mold in the crawl space. He opined that the quality and condition of the cabin were very poor, and that the Quonset was in fair to good condition. Graves testified that in his opinion the cabin was uninhabitable and that the cabin's value would largely be determined by its salvage value.

Graves testified that he would list the property at \$11,250. He further testified that he was not familiar with other sales at Sherman Lake and that he had not analyzed sales of any comparable properties at Sherman Lake. Graves testified that a typical buyer would consider the leasehold lease amount, the cost to raze the current improvements, and the costs to remedy any flooding or terrain issues.

Sherie Kuszak, the Sherman County Assessor, testified at the hearing on behalf of the County Board. Kuszak testified that she and two members of the County Board inspected the Subject Property in June 2011 prior to the County Board protest proceeding. Kuszak testified that based upon that inspection square footage was added to the basement. Kuszak testified that she did not see any mold during the inspection, although she did see water damage. She further testified that at the time of the inspection she did not know that the crawl space existed and that she was not aware at the time of the inspection that there was a concern regarding mold anywhere in the cabin. Kuszak testified that the roof and siding on the cabin were newer and that in her opinion the Subject Property was habitable. She also testified that her determination that the Subject

Property was average in quality and condition was based in part upon her prior inspections of other cabins (less than 10% of 89 cabins) located at Sherman Lake. Kuszak testified that, after her inspection of the Subject Property and the testimony of the Taxpayer's witnesses, she retained her opinion that the Subject Property was in average condition and quality as of January 1, 2011.

Kuszak testified that had she seen mold in the cabin she would have reduced the condition of the Subject Property from average to fair, and that in her opinion this would have decreased the contribution to value of the improvements by \$1,000. Kuszak further testified that if the condition of the property was reduced from average to poor it would result in a \$2,000 decrease to the contribution to value of the Subject Property's improvements.

The Taxpayer's arguments amount to an assertion that the condition of the Subject Property should be decreased from average to fair or poor. The Commission takes statutory notice of the following condition criteria from *Marshall and Swift*:

Average Condition – Some evidence of deferred maintenance and normal obsolescence with age in that a few minor repairs are needed, along with some refinishing. But with all major components still functional and contributing toward an extended life expectancy, effective age and utility is standard for like properties of its class and usage.

Fair Condition (Badly Worn) -- Much repair needed. Many items need refinishing or overhauling, deferred maintenance obvious, inadequate building utility and services all shortening the life expectancy and increasing the effective age.

Poor Condition (Worn Out) - Repair and overhaul needed on painted surfaces, roofing, plumbing, heating, numerous functional inadequacies, substandard utilities etc. (found only in extraordinary circumstances). Excessive deferred maintenance and abuse, limited value-in-use, approaching abandonment or major reconstruction, reuse or change in occupancy is imminent. Effective age is near the end of the scale regardless of the actual chronological age.²⁰

Moreover, the Commission gives greater weight to the County Assessor's opinions, based upon her inspection in June 2011, than to the opinions of Stueven (as owner) and Graves (based upon his walk-through in October 2011). There is a presumption that the assessing official has

²⁰ *Residential Cost Handbook*, Marshall & Swift/Boeckh, LLC, (12/2011) at E-6.

performed his or her duties according to law.²¹ The presumption in favor of the assessing official should not be overturned by the testimony of interested witnesses.²² Additionally, the June inspection by Kuszak was performed closer in time to the assessment date of January 1, 2011, than the inspection by Graves, by someone more familiar with the properties located at Sherman Lake, and with the knowledge and skill to make a determination regarding a condition rating and of the actual value of the Subject Property.

Kuszak testified she was familiar with other properties at Sherman Lake. She had sufficient knowledge to determine the appropriate standards of condition and quality to be applied in the assessment. There is no standard at law or in commonly accepted mass appraisal literature that designates how many comparable properties must be inspected prior to assessing the Subject Property. Kuszak's testimony indicates that she had sufficient knowledge to determine the appropriate standard and that her opinion has greater weight than that of interested parties untrained in the assessment or appraisal of real property. While it is true that Kuszak had limited knowledge of other properties at Sherman Lake, the burden is on the Taxpayer to prove by clear and convincing evidence that the determination of value by the County Board was arbitrary or unreasonable.²³ Kuszak testified that the condition determination was based upon her inspection of the Subject Property and a reasoned comparison with other properties at Sherman Lake. The County Board relied upon Kuszak's assessment. The Taxpayer's assertions amount to a disagreement with the determination of the County Board. The Taxpayer did not present clear and convincing evidence that the condition classification was arbitrary or unreasonable. A mere difference of opinion does not meet the statutory burden.²⁴

V. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its

²¹ See, *State ex rel. Bee Building Co. v. Savage*, 65 Neb. 714 (1902); *Woods v. Lincoln Gas & Electric Co.*, 74 Neb. 526 (1905); *Brown v. Douglas Co.*, 98 Neb. 299 (1915); *Gamboni v. County of Otoe*, 159 Neb. 417 (1954); *Ahern v. Board of Equalization*, 160 Neb. 709 (1955); *Collier v. Logan County*, 169 Neb. 1 (1959); *Josten-Wilbert Vault Co. v. Board of Equalization*, 179 Neb. 415 (1965).

²² *Helvey v. Dawson County Board of Equalization*, 242 Neb. 379, 387, 495 N.W.2d 261, 267 (1993) (quoting *LeDioyt v. County of Keith*, 161 Neb. 615, 630, 74 N.W.2d 455, 464 (1956)).

²³ *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008) (quoting *Bumgarner v. County of Valley*, 208 Neb. 361, 366, N.W.2d 307, 310 (1981)).

²⁴ See, *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008) (quoting *Bumgarner v. County of Valley*, 208 Neb. 361, 366, N.W.2d 307, 310 (1981)).

determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the decision of the County Board is affirmed.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Sherman County Board of Equalization determining the value of the Subject Property for tax year 2011 is affirmed.
2. The assessed value of the Subject Property for tax year 2011 is:

Leasehold	\$37,500
<u>Improvements</u>	<u>\$39,045</u>
Total	\$76,545

3. This Order, if no appeal is timely filed, shall be certified to the Sherman County Treasurer and the Sherman County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2011 Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Order shall only be applicable to tax year 2011.
7. This Order is effective for purposes of appeal on December 17, 2012.

Signed and Sealed: December 17, 2012.

Robert W. Hotz, Commissioner

SEAL

Appeals from any Order of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (2011 Supp.) and other provisions of Nebraska Statutes and Court Rules.

Commissioner Thomas D. Freimuth, dissenting:

I. VALUATION

A. Summary of the Taxpayer's Evidence

The parties stipulated on the record that the \$37,500 leasehold value imposed by the County for assessment purposes in 2011 is not in controversy. Therefore, the sole disputed issue is the County's assessment of the improvements (i.e., the residence and the Utility Quonset) for tax year 2011 in the amount of \$39,045.

The Taxpayer's attachment to his appeal submitted to the Commission states as follows:

"The cabin was Build with used Material that was old House take down that was 50 to 90 year old. I build the cabin in 1966 with 95% 90 year old material. only the Shingle and siding nails was new. Even the Quonset was used it leaks as you can see. By the picture. The cabin build on the side hill when it rain a in or more the water Go under the cabin in the storm shelter. The windows are at least 70 to 90 years old leak some board up. Only leak when it rain. The doors 70 to 90 years old with different door Knots hole coverd up. Old metal Kitchen cabinets with sink at least 70 to 80 years old and cabinets above stove and Ref. About 6 ft. at least 70 to 80 years old paint over. No Heat no Air. can't open the Windows can't replace the windows because they don't make windows that sizes You have take the wall out. Then you have replace the siding and the paneling in side.

"They got storage 77 Sq. ft. it only 4ft. 10 In. high with door open you may have 48 in. All is for to get to water shut off. You could hit your head. That is way I have closed. There mice and Golfer and snakes under there.

"The Real estate people say they cannot's sell it with water in it like this. Windows like this and Quonset Leak like that.

"I can't sell something I don't have only what I got. The cabins that was sold They fix them up before they sale them. That why your value are off.

"If my cabin was on the top of the Hill. Rebuilt with new Material. It be a different story I don't have that.

"I only got what I got..."

The Taxpayer's protest found at Exhibit 1, which was filed with the Sherman County Clerk on June 14, 2011, requested an improvement value of \$17,165. I note that the Property Record File in evidence at page 1 of Exhibit 3 states that the improvement value amounted to \$17,165 in 2008 and thereafter increased.

Gene Graves, a Grand Island real estate broker, auctioneer and gun dealer, submitted testimony and a letter found at Exhibit 8 regarding value and condition.²⁵ The Exhibit 8 letter is dated October 17, 2011, and Mr. Graves testified that it is based on his inspection of the Subject Property on October 11, 2011.

While Mr. Graves testified that he obtained his real estate license in 2006, he also testified that he is not a licensed appraiser. Thus, the hearing record provides that his input regarding valuation is based on his experience as a real estate agent rather than a licensed appraiser.

The letter authored by Mr. Graves at Exhibit 8 values the Quonset at \$4,750 and the residence at \$6,500, for a total market value of improvements in the amount of \$11,250. The letter at Exhibit 8 also states as follows regarding the residence:

- No heat or cooling
- Fixtures are outdated, even for a cabin
- Kitchen and bath in extremely poor condition
- Windows all need to be totally replaced
- Cabin sets on a side hill and drainage is extreme problem
- Cabin would have to be moved uphill to prevent further water damage
- Total condition of cabin is poor
- Questionable whether property is habitable in present condition.

As indicated above, Mr. Graves's letter states that the condition of the residence is poor. He also testified that the condition of the Quonset is good. I note that Mr. Graves testified that he is not an expert regarding condition ratings for appraisal purposes.

The Taxpayer testified that he has worked in the "building" business "all" of his life, and that the residence which he built in 1966 and the Quonset which he erected in 2003 are subject to significant deferred maintenance. In support of this testimony, the Taxpayer referenced photographs found at Exhibit 14 that depict several deferred maintenance issues, including leaks, window rot and at least one boarded-up window. Mr. Graves testified that the condition of the residence windows was very poor, and he also stated that the condition of lighting and appliance fixtures generated safety issues.

The Taxpayer and Mr. Graves further testified that the residence is uninhabitable due to frequent water intrusion and associated mold. In support of this testimony, the Taxpayer referenced photographs at Exhibit 14 that depict water intrusion problems in the basement storm

²⁵ Mr. Graves testified that he has maintained his real estate license for 2.5 years, and he also testified that he originally obtained this license in 2006. He further testified that he holds licenses to conduct his auctioneer and gun dealer businesses.

cellar and adjacent to the crawl space. The Taxpayer testified that mold was present in the basement storm cellar and the crawl space, and that consequently he no longer stays at the residence overnight for safety reasons.

Mr. Graves testified that he is qualified to conduct mold inspections, and that he observed mold in the basement storm cellar during his inspection on October 11, 2011. He also testified that mold in “all likelihood” existed in the crawl space based on his observation of significant water intrusion adjacent thereto (Mr. Graves testified that he did not get on his hands and knees to enter the crawl space during his inspection). The Taxpayer testified that the mold observed by him and Mr. Graves existed on the January 1, 2011 assessment date.

The Taxpayer and Mr. Graves testified that the presence of mold stemming from frequent water damage prevents the sale of the residence for anything other than salvage value. Consequently, the Taxpayer testified that value of the residence is zero, while Mr. Graves testified that his \$6,500 residence valuation is based on salvage value.²⁶

B. Summary of the County’s Evidence

The Property Record File for the Subject Property in evidence at Exhibit 3, which is dated April 11, 2012, states that the County’s total valuation in the amount of \$89,760 is comprised of \$37,500 leasehold value and \$52,260 improvement value. While the Property Record File at Exhibit 3 **does not** provide detailed information regarding the improvement value for the 2011 tax year that is at issue in this appeal, page 3 of Exhibit 3 indicates that the \$52,260 improvement value for the subsequent taxable year 2012 is based on the cost approach using a 40% depreciation factor. The County Assessor, Sherie Kuszak, testified that the \$39,045 improvements value for taxable year 2011 at issue in this appeal was based on the cost approach, and that the County’s sales comparables found at Exhibits 6 and 7 were used to support this valuation.

The Property Record File in evidence dated April 11, 2012 rates the improvements on the Subject Property as average in terms of quality and condition.²⁷ With respect to tax year 2011 at issue in this appeal, the County Assessor recommended an average rating in terms of quality and condition prior to the County Board of Equalization’s consideration of the Taxpayer’s protest.²⁸ In response to cross-examination by the Taxpayer’s attorney, the County Assessor testified that

²⁶ Mr. Stueven testified that the value of the Quonset is \$3,000. As indicated above, Mr. Graves valued the Quonset at \$4,750.

²⁷ Exhibit 3:3.

²⁸ Exhibit 1:1.

her average rating of the improvements for tax year 2011 was based in part on inspection of less than 10% of the 89 homes adjacent to Sherman Lake. Subsequent to the Taxpayer's protest filing in June of 2011, the County Assessor and at least two members of the County Board inspected the Subject Property, and the County Board thereafter adopted the Assessor's average condition and quality rating recommendation at its meeting on July 20, 2011.²⁹ The County Assessor testified that she served as Deputy County Assessor at the time of the inspection in 2011.

The County Assessor testified that the inspection of the Subject Property in June of 2011 disclosed water damage in the basement storm cellar. She also testified that while the inspection did not disclose mold in the basement storm cellar, she did not inspect the crawl space where the Taxpayer and Mr. Graves alleged mold existed as of the January 1, 2011 assessment date. The County Assessor further testified that she would lower the condition rating of the residence from average to fair in the case of mold. She also testified that the residence is habitable.

The County Assessor's testimony addressed quantification of fair and poor condition ratings as compared to the Subject Property's average condition rating. She testified that a fair condition rating would generate a \$1,000 valuation reduction, and that a poor condition rating would require a \$2,000 reduction.

In response to cross-examination by the Taxpayer's attorney regarding the County's sales comparables found at Exhibits 6 and 7 that were used to support the County's \$39,045 improvements valuation for tax year 2011, the County Assessor testified that she was not aware that either of these properties have experienced water damage similar to the Subject Property. In response to questions from the Commission, she also testified that she was unaware of any properties at Sherman Lake that experienced water damage similar to the residence on the Subject Property.

The County Assessor testified that she is not a licensed appraiser. In response to a question from the Commission regarding the substantial increase in sale prices of lake properties during the previous three years generally and specifically about the analysis of these sales in terms of the proper assessment of improvements at Sherman Lake by using vacant land sales, the County Assessor testified that "I don't know how to do that." She also testified that "I'm new at this."

²⁹ Exhibit 1:1.

C. Valuation Analysis – Condition

The *Residential Cost Handbook* published by Marshall & Swift states as follows with respect to condition ratings³⁰:

Average Condition – Some evidence of deferred maintenance and normal obsolescence with age in that a few minor repairs are needed, along with some refinishing. But with all major components still functional and contributing toward an extended life expectancy, effective age and utility is standard for like properties of its class and usage.

Fair Condition (Badly Worn) -- Much repair needed. Many items need refinishing or overhauling, deferred maintenance obvious, inadequate building utility and services all shortening the life expectancy and increasing the effective age.

Poor Condition (Worn Out) - Repair and overhaul needed on painted surfaces, roofing, plumbing, heating, numerous functional inadequacies, substandard utilities etc. (found only in extraordinary circumstances). Excessive deferred maintenance and abuse, limited value-in-use, approaching abandonment or major reconstruction, reuse or change in occupancy is imminent. Effective age is near the end of the scale regardless of the actual chronological age.

Based on the testimony and documentation offered by the Taxpayer and his real estate agent regarding significant deferred maintenance, water intrusion and mold, together with the County Assessor's testimony regarding her level of experience, I find that the condition of the residence portion of the Subject Property is fair rather than average under the above *Residential Cost Handbook* definitions.^{31 32} While I note that the *Residential Cost Handbook* definition of average condition contemplates consideration of "like properties," I am not persuaded that the County Assessor's testimony regarding her review of less than 10% of 89 properties surrounding Sherman Lake is sufficient to support her opinion in terms of condition, and I also find that a close review of the County Assessor's testimony in this regard discloses uncertainty regarding

³⁰ *Residential Cost Handbook*, Marshall & Swift/Boeckh, LLC, (12/2011) at E-6

³¹ Assessed value, as determined by the County Board, was based upon the evidence at the time of the protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board at the protest proceeding. Thus, the testimony of the Taxpayer and Mr. Graves regarding the presence of mold is given weight, as is the County Assessor's testimony that she would have assigned a fair condition rating in the case of mold. I note, however, that I am persuaded by the evidence that the condition of the residence is fair regardless of the evidence of mold.

³² I note that the majority opinion states that the County Assessor testified "that at the time of the inspection she did not know that the crawl space existed and that she was not aware at the time of the inspection that there was a concern regarding mold anywhere in the cabin." In light of the testimony of the Taxpayer and Mr. Graves regarding multiple problems associated with the residence, I do not give great weight to the County Assessor's testimony as it relates to mold. In other words, I am persuaded that it is understandable that the Taxpayer did not focus on mold during the County's inspection because he had many assessment issues to address.

this opinion. Therefore, I find that the Taxpayer has provided competent evidence to rebut the presumption that the County's average condition rating is based on sufficient competent evidence to justify its decision.

The Taxpayer and Mr. Graves testified that the residence is uninhabitable due to water intrusion and associated mold. In other words, under the *Residential Cost Handbook* definitions above, the Taxpayer asserts that the condition of the residence is poor. Based on a review of the County's photographs found at Exhibit 5 and the Taxpayer's photographs found at Exhibit 14, it is apparent that the Taxpayer used the residence in 2011. I also note that the Taxpayer testified that he has improved the roof, siding and vanity since he originally constructed the residence in 1966. Therefore, while I have given weight to the Taxpayer's testimony that he no longer stays overnight at the residence for safety reasons for purposes of my fair condition finding above, I am not persuaded that the condition of the residence was poor or uninhabitable as of the January 1, 2011 assessment date.

D. Valuation Analysis – Quantification of Actual Value of Improvements

In light of the finding that the Taxpayer rebutted the presumption in favor of the County, I am tasked with determining the best evidence of value of the improvements. Under Nebraska law, the burden is on the Taxpayer to show that the County's \$39,045 improvements valuation is unreasonable or arbitrary.³³

The County Assessor's notes found at page 1 of Exhibit 3 shows that the County assessed the Subject Property's improvements in the amount of \$17,165 for tax year 2008, and the Taxpayer's protest form found at Exhibit 1 contends that this assessed valuation should also apply to the 2011 tax year. I note that the Taxpayer's \$17,165 improvements valuation calculation marked as Exhibit 4 was not offered as evidence and therefore cannot be relied upon.

The Taxpayer and Mr. Graves testified that the residence is limited to salvage value because it is uninhabitable due to water intrusion and associated mold. The letter authored by Mr. Graves found at Exhibit 8 values the Quonset at \$4,750 and the residence at \$6,500, for a total market value of improvements in the amount of \$11,250 (the Taxpayer testified that salvage value of the residence is zero and the value of the Quonset is \$3,000, while Mr. Graves testified that the \$6,500 residence amount is salvage value). As discussed above, however, I am not

³³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

persuaded that the residence is uninhabitable, so these improvements valuations offered by the Taxpayer and Mr. Graves are not adopted.

The County's Property Record File dated April 11, 2012 found at pages two and three of Exhibit 3 is problematic because it **does not** provide detailed information regarding the improvement value for the 2011 taxable year. I note, however, that page 3 of Exhibit 3 indicates that the \$52,260 improvement value for taxable year 2012 is based on the cost approach using a 40% depreciation factor. The County Assessor testified that the \$39,045 improvements value for taxable year 2011 was also based on the cost approach, and that the County's sales comparables found at Exhibits 6 and 7 were used to support this valuation. The County Assessor also testified that a fair condition rating would lower the valuation by \$1,000. Therefore, because the Taxpayer has not provided sufficient evidence to quantify the \$17,165 improvements valuation set forth on his protest form filed in June of 2011 nor the \$3,000 and \$11,250 salvage valuations discussed above, I conclude that \$38,045 (\$39,045 assessment for 2011 less \$1,000 condition adjustment) is the best evidence of improvements value in this case.

E. Conclusion

I find that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. I also find that there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the decision of the County Board should be vacated and reversed. I would find that the assessed value of the Subject Property for tax year 2011 is:

Leasehold	\$37,500
<u>Improvements</u>	<u>\$38,045</u>
Total	\$75,545

Thomas D. Freimuth, Commissioner