

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

| | | |
|----------------------------|---|--------------------|
| MARILYN J. LORE, BOX BUTTE |) | |
| COUNTY ASSESSOR, |) | |
| |) | CASE NO. 01A-129 |
| Appellant, |) | |
| |) | |
| vs. |) | |
| |) | |
| BOX BUTTE COUNTY BOARD OF |) | FINDINGS AND ORDER |
| EQUALIZATION, |) | |
| |) | |
| and |) | |
| |) | |
| THE ESTATE OF EDWARD F. |) | |
| JELINEK, |) | |
| |) | |
| Appellees. |) | |

Filed August 11, 2003

Appearances:

For the Appellant: Dennis D. King, Esq.
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For the Box Butte County Board of Equalization: Russell W. Harford, Esq.
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For The Estate of Edward F. Jelinek: No Appearances

Before: Commissioners Hans, Wickersham and Reynolds.

Wickersham, Vice-Chair, for the Commission.

SUMMARY OF DECISION

The Commission vacates and reverses the decision of the Box Butte County Board of Equalization which granted Taxpayer's protest in part. The value of the property as determined by the Box Butte County Assessor is therefore reinstated.

NATURE OF THE CASE

Edward F. Jelinek owned certain agricultural real property located in Box Butte County, Nebraska ("the subject property"). James L. Jelinek, the Personal Representative of the Estate of Edward F. Jelinek, ("the Taxpayer") protested the assessed value of the subject property as determined by the Box Butte County Assessor ("the Assessor") to the Box Butte County Board of Equalization ("the Board"). (E224:2). The Taxpayer, by way of relief, requested that the proposed 2001 valuation be reduced. The Board granted the protest in part. The Board, in reaching this decision, used a per acre value for agricultural land based on "an average number for the three market areas with a cap at the number shown by the initial appraised value." (E224:2).

The Assessor timely filed an appeal of the Board's decision. The District Court for Box Butte County appointed legal counsel for the Assessor as authorized by Neb. Rev. Stat. §77-5007.01 (Cum. Supp. 2002). The Box Butte County Attorney withdrew as counsel for the Board, which then retained private counsel.

The Commission served an Order for Hearing and Notice of Hearing on the Parties. The Order and Notice set the hearing for this matter and 118 other cases from Box Butte County for November 19, 2002. The Assessor appeared at this hearing with counsel. The Board appeared through counsel at the hearing. The Taxpayer, however, failed to submit any documentary evidence as

required by the Commission's rules and regulations, and also failed to appear at the hearing.

The Assessor, at the hearing on the merits of the appeal, moved for a default judgment against the Taxpayer. The Board objected, and the Commission took the motion under advisement. Thereafter the Parties who appeared were afforded the opportunity to present both evidence and argument as required by Neb. Rev. Stat. §77-5015 (Cum. Supp. 2002). The matter now comes on for decision.

I.
EVIDENCE BEFORE THE COMMISSION

The Commission took notice of the following documents as authorized by Neb. Rev. Stat. §77-5016(5) (Cum. Supp. 2002): the Commission's case file for Case No. 01A-129; the Case Files for the 118 cases which were consolidated with Case Number 01A-129 for purpose of hearing; the Tax Equalization and Review Commission's Brochure; the Nebraska Constitution; the Nebraska State Statutes and the amendments to those statutes; *Title 442, Nebraska Administrative Code* (the Tax Equalization and Review Commission's Rules and Regulations); *Title 350, Nebraska Administrative Code* (Department of Property Assessment and Taxation's Rules and Regulations); *Title 298, Nebraska Administrative Code* (the Real Estate Appraiser Board's Rules and Regulations); the *2001 Reports and Opinion of the Property Tax*

Administrator for Box Butte County; the 2001 Statewide Equalization Proceedings; the Nebraska Real Estate Appraiser Board Certification Requirements; the Nebraska Real Estate Appraiser Board Education Core Curriculum; the Nebraska Agricultural Land Valuation Manual (Reissue 2001); the Nebraska Assessor's Reference Manual (Reissue 2001); four standard reference works published by the International Association of Assessing Officers: Property Assessment Valuation, Second Edition (1996); Property Appraisal and Assessment Administration (1990); Glossary for Property Appraisal and Assessment (1998); and Mass Appraisal of Real Property (1999); three standard reference works published by the Appraisal Institute: The Dictionary of Real Estate Appraisal, 3rd Ed., Appraisal Institute (1993); The Appraisal of Real Estate, Twelfth Edition (1996); The Appraisal of Rural Property, Second Edition (2000); the Uniform Standards of Professional Appraisal Practice (2001); Black's Law Dictionary, Sixth Ed., West Publishing Co. (1999); the Soil Survey for Box Butte County; and Nebraska Farm Real Estate Market Developments, 2000 - 2001, published by the Nebraska Cooperative Extension Office.

The Commission also received certain exhibits and testimony during the course of the hearing.

II.
ISSUES BEFORE THE COMMISSION

Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002) limits the Commission's jurisdiction to those questions raised before the County Board of Equalization and to those issues sufficiently related in content and context to be deemed the same question at both levels. *Arcadian Fertilizer v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 505, 583 N.W.2d 353, 357 (1998). The issues before the Commission are:

1. The Assessor's allegation that the Board's action failed to promote more uniform and proportionate assessments, but rather would result in an unacceptable quality of assessment. (*Appeal Form, attached Reasons for Appeal.*) Restated, the Assessor alleges that the decision of the Board concerning the agricultural land component of the subject property was incorrect, unreasonable and arbitrary;
2. The Assessor's allegation that the value of the agricultural land component of the subject property as determined by the Board was unreasonable.

The Board, at the hearing before the Commission, raised two additional issues. These issues had not been raised during the proceedings before the Board, or in the Board's Answer. The new issues presented for the first time at the hearing before the Commission are:

3. The Board's allegation that the use of "market areas" for the valuation of agricultural land is contrary to law; and,
4. The Board's allegation that the Assessor's value was based on an improper use of "market areas."

The Commission will address these issues in order to present a full and complete record for purposes of review.

III. STANDARD OF REVIEW

The Assessor, in order to prevail, is required to demonstrate by clear and convincing evidence that (1) the decision of the Board was incorrect; and (2) that the decision of the Board was either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002). The Supreme Court has determined that in order to meet the "unreasonable or arbitrary" burden of persuasion the Assessor must adduce clear and convincing evidence that the Board either (1) failed to faithfully perform its official duties; or (2) that the Board failed to act upon sufficient competent evidence in making its decision. *Garvey Elevators v. Adams County Bd. of Equal.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). The Assessor, 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. of Equal.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

**IV.
FINDINGS OF FACT**

The Commission, in determining cases, is bound to consider only that evidence which has been made a part of the record before it. No other information or evidence may be considered. Neb. Rev. Stat. §77-5016(3) (Cum. Supp. 2002). The Commission may, however, evaluate the evidence presented utilizing its experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016(5) (Cum. Supp. 2002).

From the pleadings and the evidence contained in the record before it, the Commission finds and determines as follows:

**A.
PROCEDURAL FINDINGS**

1. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2002) requires that non-agricultural real property be valued at actual value.
2. Neb. Rev. Stat. §77-201(2) (Cum. Supp. 2002) requires that agricultural real property be valued at 80% of actual value.
3. Neb. Rev. Stat. §77-112 (Cum. Supp. 2002) defines "actual value" as the "market value of real property in the ordinary course of trade."
4. "Actual value" or "market value" may be determined using "professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach, (2) income approach, and (3) cost approach." Neb. Rev. Stat. §77-112 (Cum. Supp. 2002).

5. Professionally accepted mass appraisal methods recognize that:

“When appraising real estate, the assessor must consider two separate entities: land, which is the nonwasting portion of the real estate; and improvements, which are the wasting portion subject to various forms of depreciation. Land and improvements are frequently valued separately so that the trends and factors affecting each can be studied. In fact, many statutes require separate valuation of the land and buildings.”

Property Assessment Valuation, 2nd Ed., International Association of Assessing Officers, 1996.

6. The property which is the subject of this appeal is a tract of land legally described as the E½ Section 14, Township 25, Range 49, consisting of approximately 320 acres, in Box Butte County, Nebraska. (E224:1). The tract of land is unimproved. (E224:1).
7. Edward F. Jelinek was the owner of record of the subject property as of January 1, 2001 (“the assessment date”). (E224:1).

8. The Assessor, for tax year 2001, utilized professionally accepted mass appraisal methodologies in valuing the subject property.
9. The Assessor, using the Sales Comparison Approach, determined that 80% of the actual or fair market value of the agricultural land component of the subject property was \$126,790. (E224:4). Eight acres of roads on the subject property were valued at zero. (E224:4). The total assessed value of the land component of the subject property was therefore \$126,790. (E224:4). The Assessor recorded this value on the Assessment Record for 2001. (E224:1).
10. The personal representative of an estate may initiate and maintain proceedings for the protection of the estate. Neb. Rev. Stat. §30-2476(22) (Reissue 1995).
11. The Taxpayer timely filed a protest of the proposed valuation, and requested that the subject property be valued in the amount of \$100,685. (E224:2).
12. The Board granted the protest in part.
13. The Board determined that 80% of the actual or fair market value of the agricultural land component of the subject property was \$118,392. (E224:2; E224:5). The Board did not change the value of the eight acres of roads. (E224:5).
14. The Assessor thereafter timely filed an appeal of the Board's decision to the Commission. (Appeal Form).

15. The Commission served a Notice in Lieu of Summons on the Board on October 10, 2001. (*Commission Case File, Affidavit of Service*).
16. The Board answered that Summons in accordance with the Commission's rules and regulations on October 10, 2001. (*Commission Case File, Appellee's Answer*).
17. The Commission served a Notice in Lieu of Summons addressed to Edward F. Jelinek on October 10, 2001. (*Commission Case File, Notice in Lieu of Summons*).
18. The Taxpayer failed to file an Answer as required by 442 Neb. Admin. Code, ch. 3, § 030 (2002).
19. The Commission entered an Order consolidating this appeal with 118 other appeals on March 21, 2002. A copy of this Order was served on each of the Parties. No Party objected to the Order.
20. The Commission issued an Order for Hearing and Notice of Hearing on March 21, 2002. The Order set the matter for hearing on June 12, 2002.
21. The Taxpayer failed to appear at the June 12, 2002, hearing.
22. The Commission issued an Amended Order for Hearing and Amended Notice of Hearing on August 13, 2002. The Order and Notice set the matter for hearing on the merits of the appeal for November 19, 2002.

23. An Affidavit of Service contained in the Commission's records for this matter demonstrates that a copy of the Order and Notice was served on each of the Parties.
24. The Taxpayer failed to appear at the November 19, 2002, hearing.
25. The Taxpayer failed to serve any exhibits on the Assessor, on the Board, or the Commission.
26. The Parties present at the hearing on the merits of the appeal stipulated that the value of the road land was not at issue.

B.
SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The Assessor utilized the Sales Comparison Approach to value the agricultural land component of the subject property. The sales of agricultural real property relied on by the Assessor in determining her opinion of value are found in Exhibit 127.
2. The Assessor, based on those sales, developed agricultural "market areas" within Box Butte County. (E124).
3. The Assessor then utilized the sales within each agricultural market area to determine the value of soil types on a per acre basis. (E126).
4. The values were then applied to each soil type on the subject property to yield an opinion of value. (E224:4).

5. This procedure is consistent with the applicable provisions of Neb. Rev. Stat. §§77-1359 through 77-1371 (Cum. Supp. 2002).
6. This procedure is also consistent with the rules and regulations promulgated by the Property Tax Administrator for the valuation of real property. 350 Neb. Admin. Code, chs. 10, 12, 14, 70 (2002).
7. The uncontroverted evidence establishes that the Board's determination of value for the agricultural land component in each of the 119 appeals was based on the average of the final per acre values for the three agricultural market areas within the County for tax year 2001.
8. The methodology used by the Board is neither a professionally accepted mass appraisal methodology nor a professionally accepted fee appraisal methodology.
9. The uncontroverted evidence also establishes that the Board's methodology was only utilized if the "average" per acre value of the three "market areas" did not exceed the value as determined by the Assessor.
10. The Taxpayer failed to appear at the hearing. There is, therefore, no evidence of actual or fair market value from the owner of the property.
11. The Board adduced no evidence of actual or fair market value for the subject property.

12. The only evidence of actual or fair market value for the subject property is the expert testimony of the Assessor.

V.
A.
ANALYSIS

The ultimate issue presented is the correct assessed value of the agricultural land component of the subject property. In this appeal that question is resolved by a determination of 80% of actual or fair market value of the agricultural land component of the subject property.

The Assessor determined that 80% of the actual or fair market value of this agricultural land was \$126,790 as of the assessment date. (E224:4). The Assessor based this determination of value on the Sales Comparison Approach. The Sales Comparison Approach is a professionally accepted mass appraisal methodology recognized by statute. Neb. Rev. Stat. §77-112 (Cum. Supp. 2002).

The sales of agricultural real property relied on by the Assessor in determining value are found in Exhibit 127. The Assessor, based on those sales, developed agricultural "market areas" within Box Butte County. (E124). The Assessor then utilized the sales within each agricultural "market area" to determine the value of the soil types on the subject property to yield an opinion of value. (E224:4).

This procedure is consistent with the applicable provisions of Neb. Rev. Stat. §77-1359 through 77-1371 (Cum. Supp. 2002). This procedure is also consistent with the rules and regulations promulgated by the Property Tax Administrator for the valuation of real property. 350 Neb. Admin. Code, chs. 10, 12, 14 and 70 (2002).

The results of the Assessor's efforts were reviewed by the Property Tax Administrator. That review is in the form of a statistical profile and in an opinion required by state law. (E121:1). The Property Tax Administrator, based on available evidence, certified that for tax year 2001, the level of assessments for agricultural real property within Box Butte County was within the acceptable range as set by state law. *2001 Reports and Opinions of the Property Tax Administrator for Box Butte County, p. 78.* The Property Tax Administrator further certified that the uniformity and proportionality of assessments for agricultural land within the County was acceptable. *Id. at p. 78. See also Neb. Rev. Stat. §77-5027 (Cum. Supp. 2002).*

The Assessor also provided evidence in the form of an opinion of market value for the subject property. The Assessor was qualified as an expert based on her education, training, experience, and certification in rendering this opinion. The Assessor testified that based on her education, training and experience, 80% of the actual or fair market value of the agricultural land component of the subject property was \$126,790.

B.

LEGAL PROVISIONS GOVERNING THE USE OF MARKET AREAS

The Board however challenges the Assessor's evidence. The Board alleged for the first time at the hearing before the Commission that (1) that the use of "market areas" for the valuation of agricultural land is contrary to law; and (2) that the Assessor's value was based on an improper use of "market areas."

The Board first alleges that the use of "market areas" for the valuation of agricultural land is contrary to law. The Board adduced no evidence or argument in support of this proposition. The allegation is, in fact, inconsistent with the provisions of the Nebraska Constitution and Nebraska state law.

The Constitution provides in Art. VIII, Sec. 1, that "Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution . . ."

Section 4 specifically applies to agricultural land.

"[T]he Legislature may provide that agricultural and horticultural land, as defined by the Legislature, shall constitute a separate and distinct class of property for purposes of taxation and may provide for a different method of taxing agricultural land and horticultural land which results in values that are not

uniform and proportionate with all other real property and franchises but which results in values that are uniform and proportionate upon all real property within the class of agricultural land and horticultural land”

Nothing in these Constitutional provisions prohibits the use of market areas to value agricultural land. The Courts, in fact, have construed these mandates to require that taxes be levied proportionately, even if that proportional taxation results in assessed values which fall below the level of assessment required by law. The fundamental requirement is equalization.

“In *Kearney Convention Center v. Board of Equal.*, the Nebraska Supreme Court followed the lead of the U.S. Supreme Court in *Sioux City Bridge v. Dakota County*, and reduced the taxpayer's assessment, which all involved agreed had been set at the property's market value. The Nebraska Supreme Court held that because the taxpayer's property had not been assessed uniformly and proportionately when compared with other real property in the count, the assessment of the taxpayer's property had to be reduced. The evidence in *Kearney Convention Center* was that the agricultural land in the county was assessed at 44 percent of its market value, whereas the taxpayer's hotel property was assessed at 100 percent of its market value. Therefore, the remedy

elected by the court was to reduce the assessment against the hotel to 44 percent of its value to equalize the value of the taxpayer's property with other property in the county. The court noted that its conclusion was 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.' "

Scribante v. Douglas County Bd. of Equalization, 8 Neb.App. 25, 40, 588 N.W.2d 190, 199 (1999) (Citations omitted).

The rule mandating equalization is applicable to the Assessor as well as the Board.

"Several principles of uniformity clause jurisprudence guide our analysis. Initially, we note that while absolute uniformity of approach for taxation may not be possible, there must be a reasonable attempt at uniformity. The object of the uniformity clause is accomplished 'if all of the property within the taxing jurisdiction is assessed and taxed at a uniform standard of value.' Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value. The constitutional requirement of uniformity in taxation extends to both

rate and valuation . . . We note that a tax statute is not at issue here; rather, it is the assessor's and the Board's decisions which are being scrutinized. Nonetheless, our uniformity clause analysis remains the same. The rules as to uniformity and equal protection of the laws apply not only to acts of the legislative department but also to the valuation by the assessing officers"

Constructors, Inc. v. Cass County Bd. of Equalization, 258 Neb. 866, 873, 606 N.W.2d 786, 792 (2000) (Citations omitted).

The Constitution mandates that assessments be equalized within the class of agricultural real property. This mandate is applicable to county boards of equalization. Implementation of the mandate is governed by state law. Neb. Rev. Stat. §77-201(2) (Cum. Supp. 2002) requires that agricultural real property be valued at 80% of actual value. Neb. Rev. Stat. §77-112 (Cum. Supp. 2002) defines "actual value" as the "market value of real property in the ordinary course of trade." "Actual value" or "market value" may be determined using "professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach, (2) income approach, and (3) cost approach." Neb. Rev. Stat. §77-112 (Cum. Supp. 2002). Nothing in these statutes prohibits the use of "market areas" in the valuation of agricultural land.

These statutes do require that professionally accepted mass appraisal methods be used in the valuation of real property. Professionally accepted mass appraisal methods require that land and buildings be valued separately.

“When appraising real estate, the assessor must consider two separate entities: land, which is the nonwasting portion of the real estate; and improvements, which are the wasting portion subject to various forms of depreciation. Land and improvements are frequently valued separately so that the trends and factors affecting each can be studied.”

Property Assessment Valuation, 2nd Ed., International Association of Assessing Officers, 1996, p. 69.

The valuation of land is a complex process.

“Land has value because it provides potential utility as the site of a structure, recreational facility, agricultural tract, or right of way for transportation routes. If land has utility for a specific use and there is demand for that use, the land has value to a particular category of users. Beyond the basic utility of land, however, there are many principles and factors that must be considered in land valuation. Although it is sometimes considered the simplest of appraisal tasks, the valuation of land requires analysis of a

complex variety of factors and in practice can be the most difficult of appraisal procedures.”

The Appraisal of Real Estate, 12th Ed., Appraisal Institute, 2001, p. 331.

The Sales Comparison Approach is the most common technique for appraising land. *Supra*, at p. 337. The elements of comparison under this approach include:

“. . . property rights, financing terms, conditions of sale (motivation), expenditures immediately after purchase, market conditions (sale date), location, physical characteristics, available utilities and zoning.”

Supra, at p. 337 - 338.

C.

THE ASSESSOR'S USE OF AGRICULTURAL "MARKET AREAS"

The use of "market areas" reflects the fact that: "Social, economic, governmental, and environmental forces influence property values in the vicinity of the subject property. As a result, they affect the value of the subject property. Therefore, to conduct a thorough analysis, the appraiser must delineate the boundaries of the area of influence. Although physical boundaries may be drawn, the most important boundaries

are those that identify factors influencing property values.”

The Appraisal of Real Estate, 12th Ed., The Appraisal Institute, 2001.

The question of boundaries of the “market area” is always an important issue.

“The boundaries of market areas, neighborhoods, and districts identify the areas that influence a subject property’s value. These boundaries may coincide with observable changes in land use or demographic and socioeconomic characteristics.”

Supra, at p. 164. For agricultural land, the market area “can be as small as a portion of a township or as large as several counties.” *Supra*, at p. 183. Nebraska law reflects this principle in the statutes which require that the evaluation of the level and quality of assessments be based on “market areas” which equate to counties. *See Neb. Rev. Stat. §77-5023, et seq. (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §13).*

The evidence in this appeal establishes that the Assessor utilized agricultural “market areas” to value the subject property. There were three of these “market areas” within Box Butte County for tax year 2001. (E123:1). The “market areas” followed township lines. (E123:1). “Market Area 1” is an area encompassing five townships which include the City of Alliance, which is the county seat of Box Butte County. “Market Area 2” is

north and west of the first market area. It encompasses six townships. One of the townships includes the Village of Hemingford, a second population center for Box Butte County. (E123:1). "Market Area 3" generally runs along the south, west and north perimeter of Box Butte County. (E123:1). No major population centers are included in this market area.

These market areas reflect the fundamental principles of market area analysis: a determination of the social, economic, governmental, and environmental factors which influence value. *The Appraisal of Real Estate*, 12th Ed., The Appraisal Institute, 2001, p. 168. The "market areas" in Box Butte County for tax year 2001, from the record before the Commission, recognize that value is influenced by access to services.

"Agricultural production areas are served by highways that lead to marketing centers where farm products are sold. Like an urban neighborhood, the farm community depends on government services such as roads and schools and on the availability of electricity. Infrastructure to support the particular land use dominant in a district is important in all districts, but it is particularly important in agricultural districts. The infrastructure for agriculture includes such land uses as equipment sales and repair; outlets for seed, feed, fertilizer, herbicides, etc; and processors or intermediaries to buy farm products."

Supra, at p. 184. The Assessor established market areas based on an analysis of sales. Sale prices would reflect the comparative relevant uses associated with the tract being sold and purchased whether a component of the soil itself or other external characteristics such as proximity to a community or road. The market areas implemented by the Assessor for tax year 2001 appear to account for these fundamental principles of market area analysis.

The Board offered no evidence or argument in support of either of its allegations. There is no evidence or argument to support the contention that market areas cannot be used to value agricultural land. There is no evidence or argument to support the contention that the Assessor's values are based on an improper use of "market areas." These allegations have no merit.

D.
THE BOARD'S METHODOLOGY

The record does establish, however, that the Board, in this appeal and in each of the 118 appeals consolidated with this appeal, determined the assessed value of the agricultural land by averaging the final per acre values for each market area. The Board's methodology was only utilized if the "average" per acre value of the three "market areas" did not exceed the value as determined by the Assessor.

The Board adduced no evidence to support this methodology. This methodology is neither a professionally accepted mass appraisal methodology nor a professionally accepted fee appraisal methodology. On appeal, the Board had the opportunity to present evidence regarding market value for the subject property. This evidence might have demonstrated that the ultimate value as determined by the Board was reasonable. The Board, however, failed to adduce any evidence of actual or fair market value. There is no evidence in the record to demonstrate that the Board's methodology promoted more uniform and proportionate assessments. There is also no evidence to support the assessed value as determined by the Board.

The Taxpayer, as noted above, failed to appear at any of the proceedings before the Commission. There is, therefore, no evidence in the record of the Commission's proceedings of the owner's opinion of value.

The absence of any evidence of market value from the Board or the Taxpayer in the proceedings before the Commission begs the question of what evidence the Board relied on in reaching its determination of value. The Board is required to document its proceedings. Neb. Rev. Stat. §77-1502 (Cum. Supp. 2002) mandates that "The board shall prepare a separate report on each protest, and such report shall include a description of the property described in the protest, the recommendation of the county assessor with respect to the action proposed or taken, the names

of the witnesses whose testimony was heard in connection with the protest, a summary of their testimony, and a statement by the board of the basis upon which its action was taken." (Emphasis added.) The only report regarding the Board's action in this appeal is found in Exhibit 224 at page 2. There is no evidence that the Taxpayer appeared at the hearing before the Board. There is no record of anyone other than the Assessor presenting any evidence of value at the hearing before the Board.

The standard applicable in proceedings before the Board is well settled: in proceedings before the County Board of Equalization the valuation made and returned by the county assessor is presumed to be correct. *Woods v. Lincoln Gas and Electric Co.*, 74 Neb. 526, 527 (1905). *Brown v. Douglas County*, 98 Neb. 299, 303 (1915). *Gamboni v. County of Otoe*, 159 Neb. 417, 431, 67 N.W.2d 489, 499 (1954). *Ahern v. Board of Equalization*, 160 Neb. 709, 711, 71 N.W.2d 307, 309 (1955). The record contains no evidence of actual or market value from anyone other than the Assessor in the proceedings before the Board. There was, therefore no evidence presented to the Board to overcome the presumption in favor of the Assessor as to the value of the agricultural land.

The underlying facts are clear: the Board has attempted to discredit the valuation methods used by the Assessor without adducing evidence of actual or fair market value. The courts, when presented with such circumstances, have enunciated a clear

and unequivocal rule. A taxpayer who offers no evidence that the subject property was valued in excess of its actual value and who only produced evidence that was aimed at discrediting valuation methods utilized by county assessor, fails to meet his or her burden of proving that value of her property was not fairly and proportionately equalized or that the valuation placed upon his or her property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

E.
MOTION FOR DEFAULT JUDGMENT

The Taxpayer failed to appear at the hearing on the merits of the appeal. The Taxpayer also failed to appear at the original hearing. Neb. Rev. Stat. §77-5015(Cum. Supp. 2002) explicitly authorizes the Commission to enter an order of default judgment. The Assessor's motion for default judgment, under the facts presented here, should be granted.

F.
CONCLUSION

The Assessor bears the burden of demonstrating that the decision of the Board was incorrect and either unreasonable or arbitrary. The Assessor has demonstrated by clear and convincing evidence that the Board's decision was based on a methodology which is not a professionally accepted mass or fee appraisal

methodology. The Board failed to rely on sufficient competent evidence. The presumption in favor of the Board's action is therefore extinguished. Further, the Assessor has demonstrated by clear and convincing evidence that the final value as determined by the Board is unreasonable. That decision must therefore be vacated and reversed.

**VI.
CONCLUSIONS OF LAW**

**A.
JURISDICTION**

Jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (Cum. Supp. 2002).

**B.
STANDARD OF REVIEW**

The Commission is required to affirm the decision of the Board unless evidence is adduced establishing that the Board's decision was incorrect and further that the decision was either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002). 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).

C.
SUBSTANTIVE CONCLUSIONS OF LAW

The Commission, from the entire record before it, finds and concludes that it has jurisdiction over both the parties and the subject matter of this appeal. The Commission further finds and determines that the Assessor has met her burden of persuasion. The Board's decision must therefore be vacated and reversed.

VIII.
ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That the Appellant's Motion for Default Judgment against the Appellee-Taxpayer for failure to appear is granted. An Order of Default Judgment against the Appellee-Taxpayer is entered accordingly.
2. That the decision of the Box Butte County Board of Equalization which granted Taxpayer's protest as to the

agricultural land component of the subject property is vacated and reversed.

3. That the real property legally described as the E½ Section 14, Township 25, Range 49, in Box Butte County, Nebraska, shall be valued as follows for tax year 2001:

Land

| | |
|-------------------|-----------|
| Agricultural land | \$126,790 |
| Roads | \$ -0- |
| Total | \$126,790 |

4. That any request for relief by any party not specifically granted by this order is denied.
5. That this decision, if no appeal is filed, shall be certified to the Box Butte County Treasurer, and the Box Butte County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002).
6. That this decision shall only be applicable to tax year 2001.

7. That each party is to bear its own costs in this matter

IT IS SO ORDERED.

Dated this 11th day of August, 2003.

Wm. R. Wickersham, Vice-Chair

Robert L. Hans, Commissioner

Seal

Mark P. Reynolds, Chair