

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

DUANE L. WILKINSON and JOYCE)	
E. WILKINSON,)	
)	CASE NO. 03R-79
Appellants,)	
)	
vs.)	
)	FINDINGS AND ORDER
PAWNEE COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

Appearances:

For the Appellant: Duane L. Wilkinson
RR2, Box 8
Burchard, NE 68323

For the Appellee: Victor Faesser
Pawnee County Attorney
P.O. Box 73
Pawnee City, NE 68420

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

**I.
STATEMENT OF THE CASE**

Duane L. Wilkinson and Joyce E. Wilkinson ("the Taxpayers") own a tract of land 360 acres in size legally described as E½ & SE¼NW¼ of Section 34, Township 3, Range 9, Pawnee County, Nebraska. (E15:1). The tract of land is improved with a house and outbuildings. (E15:2 - 3).

The Pawnee County Assessor ("the Assessor") determined that 80% of the actual or fair market value of the agricultural land component of the subject property was \$218,245 as of the January 1, 2003, assessment date. (E15:4). The Assessor also determined

that the actual or fair market value of the non-agricultural land component was \$7,350 (E15:4) and the actual or fair market value of the improvements was \$11,730. (E15:3). The value of non-agricultural land and the value of the improvements are not at issue.

The Taxpayer timely protested the Assessor's determination of value. (E1). The Taxpayer alleged that the value of the agricultural land component was adversely impacted by a 17 acre pool and dam site on the property. The pool and dam site are leased to the Lower Blue Natural Resources District. (E7). The Taxpayer alleged that this lease reduced the value of the agricultural land component to \$223,477, representing 80% of actual or fair market value. (E1).

The Pawnee County Board of Equalization ("the Board") granted the protest in part and determined that 80% of the actual or fair market value of the agricultural land component of the property was \$225,595 as of the assessment date. (E1).

The Taxpayer filed an appeal of the Board's decision on August 18, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 9, 2003, which the Board answered on September 26, 2003. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on October 28, 2003. 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 January 23, 2004.

Duane L. Wilkinson appeared personally at the hearing. The Pawnee County Board of Equalization appeared through Victor Faesser, the Pawnee County Attorney.

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. §77-5016(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 Assessor inspected the subject property in June, 2003, after the proposed values had been set. The Assessor's values assumes that the subject property includes 315 acres of agricultural production land, although the vast majority of that land is in the federal Conservation Reserve Program "CRP").
2. The Taxpayers leased 20.6 acres of land for use as a pool and dam site. (E7). The Board's decision recognized all but 3.1 acres of this area as waste. Waste land is valued at \$55 per acre.
3. The Board's new evidence values three additional acres as dry production land. (E15:4).

**V.
ANALYSIS**

The Taxpayers adduced evidence that the Board's value recognizes an additional 3 acres of the pool and dam site, but values those 3 acres as dryland, when those acres should be valued as waste. Correcting the classification and values results in the following:

\$225,595 (Board's original determination of value)
- 2.6 acres of dryland (CK) at \$1,076/acre
- ½ acre of BdD dryland at \$673/acre
= -\$3,134

Add back 3.1 acres of Waste at \$55 per acre = \$171

Final value is \$225,595 - \$3,134 + \$171 = \$222,632.

**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. The Commission has provided the Parties with reasonable notice of the day and time of hearing as required by Neb. Rev. Stat. §77-5015(2003 Supp.). The Commission afforded each of the Parties the opportunity to present evidence and argument as required by Neb. Rev. Stat. §77-5015(2003 Supp.). The Commission also afforded each of the Parties the opportunity to cross-examine witnesses for the opposing Party as required by Neb. Rev. Stat. §77-5016(4) (2003 Supp.).
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 decision was not based on sufficient competent evidence, and the resulting value is unreasonable.
7. The Board's decisions must be vacated and reversed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The order of the Pawnee County Board of Equalization setting the assessed value of the subject properties for tax year 2003 is vacated and reversed.
2. The Taxpayer's real property legally described as E $\frac{1}{2}$ & SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, Township 3, Range 9, in Pawnee County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$222,632
Improvements	\$ 11,730
Total	\$234,362
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 Pawnee County Treasurer, and the Pawnee County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (2003 Supp.).
5. This decision shall only be applicable to tax year 2003.

6. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

I certify that Commissioner Lore made and entered the above and foregoing Findings and Orders in this appeal on the 23rd day of January, 2004. The same were approved and confirmed by Commissioners Hans and Reynolds 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 26th day of January, 2004.

SEAL

Wm. R. Wickersham, Chair