

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

BONNIE J. MCCASLIN,	)	
	)	
Appellant,	)	CASE NO. 03A-72
	)	03A-73
vs.	)	03A-74
	)	
CLAY COUNTY BOARD OF	)	FINDINGS AND ORDER
EQUALIZATION,	)	GRANTING MOTION TO DISMISS
	)	AT CLOSE OF TAXPAYER'S CASE
Appellee.	)	

Appearances:

For the Appellant: Bonnie J. McCaslin  
1220 Eastside Blvd., No. 311  
Hastings, NE 68979

For the Appellee: Ted S. Griess, Esq.  
Clay County Attorney  
P.O. Box 350  
Sutton, NE 68979

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

**I.  
STATEMENT OF THE CASE**

Bonnie J. McCaslin ("the Taxpayer") owns three tracts of land located in Clay County, Nebraska. Agricultural and horticultural real property must be valued at 80% of actual or fair market value. Non-agricultural real property must be valued at 100% of actual or fair market value. Neb. Rev. Stat. §77-201(Reissue 2003). The actual or fair market value of the non-agricultural real property, together with 80% of the actual or fair market value of the agricultural property, yields the assessed value of the subject property as of the assessment date.

The subject property in Case Number 03A-72 is a 70-acre tract of land legally described as the North 70 acres of the NE $\frac{1}{4}$  of Section 15, Township 5, Range 5, in Clay County, Nebraska. (E12:1). There are no improvements on this tract of land. (E12:1). The Clay County Assessor ("the Assessor") determined that the assessed value this tract of land was \$22,485 as of the January 1, 2003, assessment date. (E12:1). The Taxpayer timely filed a protest of that determination and alleged that the subject property was overvalued. (E1). The Clay County Board of Equalization ("the Board") denied the protest. (E1).

The subject property in Case Number 03A-73 is a 20-acre tract of land legally described as the East 20-acres of the South 90 acres in the NE $\frac{1}{4}$  of Section 15, Township 5, Range 5, in Clay County, Nebraska. (E11:1). There are certain improvements on this tract of land which carry a "salvage" value of \$100. (E11:1). The Assessor determined that the assessed value of the property was \$6,790 as of the assessment date. (E11:1). The Taxpayer timely filed a protest of that determination and alleged that the subject property was overvalued. (E2). The Board denied the protest. (E2).

The subject property in Case Number 03A-74 is a 10-acre tract of land legally described as Lot 4, SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 15, Township 5, Range 5, in Clay County, Nebraska. (E13:1). There are no improvements on this tract of land. The Assessor

determined that the assessed market value of this tract of land was \$9,410 as of the assessment date. (E13:1). The Taxpayer timely filed a protest of that determination and alleged that the subject property was overvalued. (E3). The Board denied the protest. (E3).

The Taxpayer appealed each of the Board's decision on August 25, 2003. The Taxpayer requested, and the Commission ordered, that each of the appeals be consolidated for purposes of hearing. The Commission served a Notice in Lieu of Summons on the Board on September 10, 2003, which the Board answered out of time but with the Commission's leave on October 28, 2003. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on April 9, 2004. An Affidavit of Service in the Commission's records establishes that a copy of each 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 July 8, 2004. The Taxpayer appeared personally at the hearing. The Board appeared through Ted S. Griess, the Clay County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Wickersham served as the presiding officer.

The Taxpayer renewed her objection addressed in the Show Cause Hearing concerning the allegation that the Clay County

Clerk failed to timely notify the Taxpayer of the Board's final decision as required by *Falotico v. Grant Cty. Bd. of Equal.*, 262 Neb. 292, 631 N.W.2d 492 (2001). The objection was again overruled, but a continuing objection was noted for the record.

The Commission afforded each of the Parties the opportunity to present evidence and argument. The Board moved to dismiss the appeal at the close of the Taxpayer's case-in-chief for failure to adduce evidence regarding essential elements of the Taxpayer's burden of proof.

## **II. ISSUES**

The issues before the Commission are (1) whether the Board's decisions to deny the Taxpayer's valuation protests were incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determinations of value were 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 adduced no evidence of actual or fair market value of the agricultural land component for any of the subject properties.
2. The Taxpayer adduced no evidence of the actual or fair market value of the improvement component with the associated building site in Case Number 03A-73.

#### **V. ANALYSIS**

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 Taxpayer here, however, adduced no evidence of actual or fair market value for any of the subject properties.

The Taxpayer adduced no evidence that the Board's decision was incorrect or unreasonable or arbitrary. 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 unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998). The Board's Motion to Dismiss must accordingly be granted.

**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. 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).
6. 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 unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998).

7. The Taxpayer has failed to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Taxpayer has failed to adduce any evidence that the Board's determination of value was unreasonable.
8. The Board's Motion to Dismiss must accordingly be granted.

**VII.  
ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:**

1. The Board's Motion to Dismiss is granted.
2. The Clay County Board of Equalization's Orders setting the assessed value of the subject properties for tax year 2003 are therefore final.
3. The Taxpayer's real property in Case Number 03A-72, legally described as the North 70-acres in the NE $\frac{1}{4}$ , in Section 15, Township 5, Range 5, Clay County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$22,485
Improvements	\$ -0-
Total	\$22,485
4. The Taxpayer's real property in Case Number 03A-73, legally described as the East 20 acres of the South 90 acres in the NE $\frac{1}{4}$ , in Section 15, Township 5, Range 5, Clay County, Nebraska, shall be valued as follows for tax year 2003:



Land	\$6,690
Improvements	\$ 100
Total	\$6,790

5. The Taxpayer's real property in Case Number 03A-74, legally described as Lot 4, SW $\frac{1}{4}$ SE $\frac{1}{4}$  in Section 15, Township 5, Range 5, Clay County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$9,410
Improvements	\$ -0-
Total	\$9,410

6. Any request for relief by any Party not specifically granted by this order is denied.
7. This decision, if no appeal is filed, shall be certified to the Clay County Treasurer, and the Clay County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).
8. This decision shall only be applicable to tax year 2003.

9. 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 8<sup>th</sup> day of July, 2004. The same were approved and confirmed by Commissioners Hans, Reynolds and Wickersham 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 9<sup>th</sup> day of July, 2004.

**SEAL**

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*Wm. R. Wickersham, Chair*