

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

LINDA K. LARSEN, Kearney)	
County Assessor,)	
)	CASE NO. 03A-86
Appellant,)	
)	
vs.)	FINDINGS AND
)	FINAL ORDER
KEARNEY COUNTY BOARD OF)	
EQUALIZATION,)	
)	
and)	
)	
GEORGE M. CAMPBELL,)	
)	
Appellees.)	

Appearances:

For the Appellant: Robert J. Parker, Jr., Esq.
Seiler & Parker, P.C., L.L.O.
P.O. Box 1288
Hastings, NE 68902

For the Appellee Charles K. Tomsen
the County Board Chair, Kearney County Board of Equal.
of Equalization: P.O. Box 339
Minden, NE 68959

For the Appellee Jim R. Titus, Esq.
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Before: Commissioners Hans, Lore, Reynolds, and Wickersham.

**I.
STATEMENT OF THE CASE**

Linda K. Larsen, the Kearney County Assessor ("the Assessor") determined that 80% of the actual or fair market value of the subject agricultural real property was \$143,890. (E2:3). The agricultural real property at issue is a tract of land

approximately 160-acres in size legally described as the SW $\frac{1}{4}$ of Section 4, Township 7, Range 16, Kearney County, Nebraska ("the subject property"). (E2:3). The property is owned by George M. Campbell ("the Taxpayer"), and is described as "irrigated grassland." (E2:3). The Taxpayer timely filed a protest of the Assessor's determination of value. (E5). The Kearney County Board of Equalization directed the Assessor to (1) change the classification of the agricultural land from "Irrigated" to "Grass;" (2) value the land as "grass land;" and (3) add \$20,000 to the assessed value of the "grass land" to account for the cost of a well.

The Assessor timely filed an appeal of the Board's decision on August 25, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 16, 2003, which the Board answered on October 14, 2003. The Commission also served a Notice in Lieu of Summons on the Taxpayer on or about September 22, 2003. The Taxpayer answered on October 3, 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 the Order and Notice, and a copy of the Amended Notice of Hearing, 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 Kearney, Buffalo County, Nebraska,

on June 30, 2004. The Assessor appeared personally at the hearing and with counsel, Robert J. Parker, Esq.. The Board appeared through Charles K. Tomsen, Chair of the Kearney County Board of Equalization. The Taxpayer appeared personally at the hearing, and with counsel, Jim R. Titus, Esq.. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer.

The Commission afforded each of the Parties the opportunity to present evidence and argument. The Commission thereafter took the matter under advisement. The matter now comes on for decision.

II. ISSUES

The issues before the Commission are (1) whether the Board's decision to grant the Taxpayer's valuation protest was incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determination of value was unreasonable.

III. APPLICABLE LAW

The Assessor bears the burden of proof in this appeal. See, generally, *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb. 390, 603 N.W.2d 447 (1999) and *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb. 810, 606 N.W.2d 736 (2000). The Assessor is therefore 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)). 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 Assessor, 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 subject property is agricultural land located in Kearney County, Nebraska. Water is applied to the land from an irrigation system installed on the subject property in 2002.
2. The Board directed the Assessor to (1) reclassify the land as "grass land;" (2) to value the land accordingly; and (3) to add \$20,000 to the resulting value to account for the value of a well.
3. The Board adduced no evidence in support of this methodology other than assertions by the Board's chair.

V.
ANALYSIS

A.
THE STATUTORY PRESUMPTION

The subject property is a tract of land approximately 160-acres in size. (E2:3). The Taxpayer improved this property in 2002 by digging a well and installing a center pivot irrigation system. The Assessor valued the property as of the January 1, 2003 assessment date, as irrigated crop land. "Irrigated land" is defined as land upon which water is applied for the production of grass or other crops. Title 350, Neb. Admin. Code, ch. 14, §002.21B and §002.37C (07/02). The Assessor is required to abide by the Property Tax Administrator's rules, regulations, instructions, orders, manuals and directives. Neb. Rev. Stat. §77-1311(2)(2003 Supp.) and Neb. Rev. Stat. §77-1330(1)(2003 Supp.). An assessor who fails to do so may be removed from office. Neb. Rev. Stat. §77-1330(2003 Supp.). Properly adopted rules and regulations have the force and effect of law. *Alexander v. J. D. Warehouse*, 253 Neb. 153, 568 N.W.2d 892 (1997).

The Board directed the Assessor to reclassify the subject property as "grass land" while the Assessor was required to classify that land as irrigated crop land.

The Board also directed the Assessor to value the subject property as grass land, when the subject property was in fact

irrigated land. The Board adduced no evidence in support of its opinion that irrigated grass land had the same actual or fair market value as grass land to which water could not be applied. The uncontroverted evidence establishes that the irrigation system doubled the carrying capacity of the land from forty cow-calf pairs to 80 cow-calf pairs. The Taxpayer also admitted that the irrigation system installed on the subject property acted as an "insurance policy" during drought conditions. The Board adduced no evidence in support of its position.

Finally, the Board directed the Assessor to add \$20,000 to the assessed value of the subject property as grass land to account for the cost of a well. The Board adduced no evidence in support of its determination of the cost of the well on the subject property.

The Board contends that its methodology (valuing irrigated crop land as grass land and adding the value of a well) is deemed an acceptable appraisal practice as shown by the transcript of a statement by a contract appraiser retained by the Assessor and was also used in neighboring Phelps County. The appraiser, however, specifically stated that the methodology must be supported by sales. (E16:6). When asked what to do if there were no sales, the appraiser, stated that the cost of development must be included in the determination of value and that the actual or fair market value of irrigated grass land would be

higher than the actual or fair market value of native grass land. (E16:6). The Board also adduced no evidence in support of the allegation that its methodology was used by Phelps County.

There is no competent or credible evidence supporting the Board's methodology. The Board's directives were contrary to the rules and regulations governing the valuation of agricultural land. The Board failed to act upon sufficient competent evidence, and failed to faithfully perform its official duties. The Board's action included a determination of value which was incorrect and both unreasonable and arbitrary. The Assessor has adduced sufficient clear and convincing evidence to extinguish the statutory presumption in favor of the Board and to show that the Board's determination of value was unreasonable.

B.
THE TAXPAYER'S EVIDENCE OF VALUE AT THE
HEARING BEFORE THE COMMISSION

The Taxpayer adduced certain evidence of value at the hearing before the Commission. The Taxpayer offered opinion evidence that the assessed value of the subject property was the same value as determined for tax year 2002. 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 prior year's assessment, however, is not relevant to the subsequent

year's valuation. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988). The Taxpayer's opinion that the property had an assessed value identical to the prior year's value is also not credible since, by the Taxpayer's own admission, the carrying capacity of the subject property doubled over the prior year's carrying capacity. This doubling of carrying capacity would positively affect actual or fair market value.

The Taxpayer testified that the portion of the subject property under the pivot could not be used for the production of crops because of the slope of the land. The Taxpayer also testified concerning the pivot irrigated alfalfa in the southeast portion of the tract. The predominant classification assigned to the irrigated soils on the subject property is Valentine Loamy Fine Sand ("VaF"). (E21:42). Those soils have slopes ranging from 9 to 17 percent. (E21:42). The Board Chair stated that slopes over 20 percent couldn't be farmed. Exhibit 21, page 3 does show hills, however, slopes were not calculated for the hills and the Commission is unable to calculate slope based on the evidence in the record. Photos taken by the Taxpayer do not appear to show slopes in excess of 20 percent. The Commission cannot conclude from this evidence that grass is the only agricultural product which may be grown on the subject property.

The Taxpayer's opinion of value, although competent, is not persuasive.

The Taxpayer also adduced the testimony of a registered appraiser licensed by the State of Nebraska. This appraiser tendered an appraisal which alleged that the actual or fair market value of the subject property was \$93,124. This opinion of value equates to an assessed value of \$74,500. [$\$93,124 \times 80\% = \$74,500.$] This opinion of value had an effective date of April 13, 2004. (E21:2). The assessment date at issue is January 1, 2003. The Taxpayer's Appraiser's opinion of value would result in an assessed value less than the 2002 assessed value of the subject property (\$77,135). (E4:12).

The Taxpayer's Appraiser's appraisal indicates that her "real estate emphasis" is on commercial and residential property. (E21:17). The Taxpayer's Appraiser further testified that she had never valued "irrigated grassland" prior to this assignment. The Taxpayer's Appraiser based her opinion of value on two approaches to value: the Income Approach and the Sales Comparison Approach. (E21:5; E21:11; E21:12). The Taxpayer's Appraiser's Income Approach is based on three "comparable" sales. (E21:5 - 7). The second and third "comparables" were sold in January, 2004, and November, 2003, respectively. (E21:6; E21:7). The Taxpayer's Appraiser identified the soil types in Comparable 1 as "Class I/II" and "Class III/IV." (E21:5). The Taxpayer's Appraiser

identified the soil types in Comparable 2 as entirely "Class IV." (E21:6). The Taxpayer's Appraiser identified the soil types in Comparable 3 as "Class II;" "Class III/IV;" and "Class I/II." (E21:7). The Taxpayer's Appraiser failed to identify the soil types for the subject property using this classification system, and failed to adduce any evidence of the adjustments necessary to account for any differences between the soil types on the "comparable properties" or any adjustments necessary to account for any differences in soil types between the "comparable properties" and the subject property. The adjustment process is critical in the valuation of property under the Income Approach and the Sales Comparison Approach. *The Appraisal of Real Estate*, 12th Ed., Appraisal Institute, 2003, pp. 498 - 499; 425 - 427.

The Taxpayer's Appraiser then listed the subject property as having 7.9 acres of "pivot irrigated" land when in fact there were 141.42 acres of pivot irrigated land on January 1, 2003. (E2:3). (The Taxpayer alleges that there were fewer irrigated acres on January 1, 2004, based on Kearney County's new GIS system. Kearney County's new GIS system was not in place on January 1, 2003, and the Taxpayer never raised the issue of misclassification of land as an issue in this appeal.) The Taxpayer's Appraiser's opinion of value under the Income Approach fails to comply with professionally accepted practices, and is neither clear nor convincing evidence of value.

The Taxpayer's Appraiser also used the Sale Comparison Approach to reach an indication of value. (E21:9 - 11). The Taxpayer's Appraiser's Sale Comparison Approach is based on three dry land sales and two pivot irrigated sales. (E21:9 - 10). Two of the five sales took place in 2004. The Taxpayer's Appraiser made no effort to identify the soil types for any of the sales, and made no effort to adjust the sale prices to account for any of the differences between the "comparable sales" and the subject property. The Taxpayer's Appraiser's opinion of value under the Sales Comparison Approach fails to comply with professionally accepted practices, and is neither clear nor convincing evidence of value.

The only remaining evidence of value is the Assessor's determination of value. The Assessor testified as to her expert opinion of assessed value (\$143,890) based on her education, training and experience. This testimony was received without objection. The Assessor's opinion of assessed value is supported by the fact that the Taxpayer doubled the carrying capacity of his land while incurring additional costs by installing and using the irrigation system, and also created an "insurance policy" against drought for his land.

The Assessor testified that corrections had been made to land classifications of the subject property for the year 2004 based on a more accurate mapping system. The Commission is

unable to determine what, if any, effect those corrections might have had on the Assessor's opinion of actual or fair market value as of the January 1, 2003, assessment date.

The Commission, from the entire record before it, finds and determines that 80% of the actual or fair market value of the subject property was \$143,890 as of the assessment date. The Board's determination of value must therefore be vacated and reversed. The Assessor's determination of value must be reinstated for tax year 2003.

**VI.
CONCLUSIONS OF LAW**

1. The Assessor is authorized to file this appeal pursuant to Neb. Rev. Stat. §77-5007.01(2003 Supp.).
2. The Commission has jurisdiction over the Parties and over the subject matter of this appeal.
3. 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).
4. 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).

5. "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).
6. The Assessor has adduced clear and convincing evidence that the Board's decision was both incorrect and unreasonable or arbitrary. The Assessor has also adduced clear and convincing evidence that the Board's determination of value was unreasonable.
7. The Board's decision must accordingly be vacated and reversed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Kearney County Board of Equalization's Order setting the assessed value of the subject property for tax year 2003 is vacated and reversed.
2. The Taxpayer's real property legally described as the SW $\frac{1}{4}$ of Section 4, Township 7, Range 16, Kearney County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$143,890
Improvements	\$ -0-
Total	\$143,890
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 Kearney County Treasurer, and the Kearney County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003).
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.

Dated this 12th day of July, 2004.

Robert L. Hans, Commissioner

Susan S. Lore, Commissioner

Mark P. Reynolds, Vice-Chair

SEAL

Wm. R. Wickersham, Chair