

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

BERNICE WICKE,)	
)	
Appellant,)	CASE NO. 03A-5
)	03A-6
vs.)	
)	
HITCHCOCK COUNTY BOARD OF)	FINDINGS AND
EQUALIZATION,)	FINAL ORDER
)	
Appellee.)	

Appearances:

For the Appellant: Bernice Wicke
R.R. 1, Box 6
Palisade, NE 69040

For the Appellee: D. Eugene Garner, Esq.
Hitchcock County Attorney
P.O. Box 367
Trenton, NE 69044

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

**I.
STATEMENT OF THE CASE**

Bernice Wicke ("the Taxpayer") owns two tracts of land in Hitchcock County, Nebraska. The Taxpayer, in Case Number 03A-5, owns a 160-acre tract of land legally described as the SW¹/₄ of Section 10, Township 4, Range 34, in Hitchcock County, Nebraska. (E12:1). The tract of land is improved with a single-family residence. (E12:1). The State Assessing Official for Hitchcock County determined that the subject property's 80% of the actual or fair market value of the agricultural land component of the subject property, and 100% of the actual or fair market value of

non-agricultural land component and 100% of the actual or fair market value of the improvement component of the subject property totaled \$66,075 as of the January 1, 2003, assessment date.

(E1:1). The Taxpayer timely filed a protest of that determination and alleged that the proposed value should be reduced. (E1:1). The Hitchcock County Board of Equalization ("the Board") denied the protest. (E1:1). The Taxpayer appealed the Board's decision on August 7, 2003.

The Taxpayer, in Case Number 03A-6, owns a 320-acre tract of land legally described as the W½ of Section 15, Township 4, Range 34, in Hitchcock County, Nebraska. (E13:1). There are no improvements on this tract of land. (E13:1). The State Assessing Official determined that 80% of the subject property's actual or fair market value was \$45,300 as of the assessment date. (E1:2). The Taxpayer timely filed a protest of that determination and alleged that the proposed value should be reduced. (E1:2). The Board denied the protest. (E1:2). The Taxpayer appealed the Board's decision on August 7, 2003.

The Commission served a Notice in Lieu of Summons on the Board in each appeal on August 13, 2003, which the Board answered on August 15, 2003. The Commission issued an Amended Order for Hearing and an Amended Notice of Hearing to each of the Parties on September 23, 2004. 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 North Platte, Lincoln County, Nebraska, on October 5, 2004. The Taxpayer appeared personally at the hearing and with her son, Kyle Kevin Wicke. The Board appeared through D. Eugene Garner, the Hitchcock County Attorney. 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 Taxpayer's son, during the course of the hearing, testified that the basis for the appeal in Case Number 03A-5 was the presence of hazardous materials on the property. The Taxpayer's son testified that this issue was not raised on the written protest (E1:1); that this issue was not raised in the hearing before the Referee; and that this issue was not raised in the hearing before the Board. The Taxpayer's son also testified that the presence of such materials was the only basis for the appeal. The Commission ruled, pursuant to *Arcadian Fertilizer, infra*, that it lack subject matter jurisdiction over that issue. The Taxpayer's son testified that but for this issue, the actual or fair market value of the subject property in Case Number 03A-5 would exceed that value determined by the Board.

**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 decisions were incorrect and (2) that the Board's decision were 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's son testified that the actual or fair market value of the subject property was adversely impacted by the following factors: minimal access; poor quality ground evidenced by the fact that it takes 8 to 10 acres to support a single cow-calf pair; a natural drainage way runs through the center of the subject property; oil production sites present on the subject property; areas where crude oil mixed with salt water is laying on the ground and not fenced off; land over grazed in prior years; drought; southern exposure of some of the slopes; and the presence of Downy Brome grass.
2. The Taxpayer's son offered testimony that the actual or fair market value of the subject property in Case Number 03A-6 was \$100 per acre due to the existence of these factors.
3. The Taxpayer's son also testified that there were no sales of agricultural land comparable to the subject property in Case Number 03A-6.

**V.
ANALYSIS**

Actual value of real property for purposes of taxation may be determined using professionally accepted mass appraisal

methods, including, but not limited to, (1) the sales comparison approach, taking into account factors such as location, zoning, and current functional use; (2) the income approach; and (3) the cost approach. This statute does not require use of all the specified factors, but requires use of applicable statutory factors, individually or in combination, to determine actual value of real estate for tax purposes. *Schmidt v. Thayer County Bd. of Equalization*, 10 Neb.App. 10, 18, 624 N.W.2d 63, 69 - 70 (2001). The Board based its decision on the Sales Comparison Approach. (E8, E9; E10; E11; E12; E13). The Board rested without adducing any evidence.

The Taxpayer's son testified that in his opinion the actual or fair market value of the subject property in Case Number 03A-6 was adversely impacted by the factors listed above. The Taxpayer's son's opinion of 80% of actual or fair market value was \$80 per acre. The Board's determination of 80% of actual or fair market value for the grassland component of the subject property was \$140 per acre (E13:3; E13:4).

An owner who is familiar with his property and knows its worth is permitted to testify as to its value. *US Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999). The Taxpayer's son however adduced no evidence in support of his opinion of value for the subject property.

The Board, based upon the applicable law, need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was [incorrect and either] unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998); Neb. Rev. Stat. §77-5016(7) (Reissue 2003). The Board's decisions must accordingly be affirmed.

**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. Administrative bodies have only that authority specifically conferred upon them by statute or by the construction necessary to achieve the purpose of the relevant act. Appeals from a county board of equalization to the Commission are controlled by [state law] . . . The statute restricts a taxpayer's appeal to a consideration of questions raised before the board of equalization, and the [Commission] is without power to adjudicate any other factual question or issue in the taxpayer's appeal. At the threshold, we address Arcadian's argument that because the jurisdictional issue was raised by the Commission and not by

the parties, there should be a presumption that issues being raised on appeal were those issues, in fact, before the County Board of Equalization. The fact is that lack of jurisdiction may exist even where the parties submit an issue to an administrative agency in the mistaken belief that the agency has statutory authority to resolve it. The parties' understanding or intentions are irrelevant to the issue of whether the Commission had jurisdiction, since the parties cannot confer subject matter jurisdiction upon a tribunal by either consent or acquiescence. There is, accordingly, no presumption that the Commission has jurisdiction. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb.App. 499, 504 - 505, 583 N.W.2d 353, 356 - 357 (1998) (Citations omitted).

6. The Taxpayer has failed to adduce clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Board's decisions must accordingly be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Hitchcock County Board of Equalization's Orders setting the assessed value of the subject properties for tax year 2003 are affirmed.

2. The Taxpayer's real property in Case Number 03A-5, legally described as the SW $\frac{1}{4}$ of Section 10, Township 4, Range 34, in Hitchcock County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Land \$50,410

Improvements \$15,665

Total \$66,075

3. The Taxpayer's real property in Case Number 03A-6, legally described as the W $\frac{1}{2}$ of Section 15, Township 4, Range 34, in Hitchcock County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Land \$45,300

Improvements \$ -0-

Total \$45,300

4. Any request for relief by any Party not specifically granted by this order is denied.

5. This decision, if no appeal is filed, shall be certified to the Hitchcock County Treasurer, and the State Assessing Official for Hitchcock County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).

6. This decision shall only be applicable to tax year 2003.

7. 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 5th day of October, 2004. Commissioner Hans dissented, and would have granted the Taxpayer the relief requested. Commissioner Lore's Finding and Orders, however, were approved and confirmed by Commissioners 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 6th day of October, 2004.

SEAL

Wm. R. Wickersham, Chair