

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

GERYL DEWAYNE HANCHERA,	)	
	)	
Appellant,	)	CASE NO. 03A-40
	)	
vs.	)	
	)	
RED WILLOW COUNTY BOARD OF	)	FINDINGS AND FINAL ORDER
EQUALIZATION,	)	DENYING RELIEF
	)	
Appellee.	)	

Appearances:

For the Appellant: Amy M. Svoboda, Esq.  
Attorney at Law  
601 East "G" Street  
Ogallala, NE 69153

For the Appellee: Philip P. Lyons, Esq.  
Deputy Red Willow County Attorney  
502 Norris Avenue  
McCook, NE 69001

Before: Commissioners Hans, Lore, and Reynolds.

**I.  
STATEMENT OF THE CASE**

Geryl DeWayne Hanchera ("the Taxpayer") owns a 160-acre tract of land legally described as the SW<sup>1</sup>/<sub>4</sub> of Section 3, Township 1, Range 28, in Red Willow County, Nebraska. (E5:1). The tract of land consists of 154-acres of agricultural land, 2-acres of farm home sites, and 4 acres of roads. (E5:11). The farm home sites are each improved with a single-family residence. There are also a number of agricultural outbuildings on the property. (E5). The "old house" is a one-story home with 1,472 square feet of above-grade finished living area built in approximately 1900.

(E5:7). The house has an unfinished basement approximately 720-square feet in size, is of "Average" "Quality of Construction" and "Average" condition. (E5:7). The "new house" is a one-and-a-half story home with 2,337 square feet of above-grade finished living area of "Good" "Quality of Construction" and "Average" condition. (E5:2). Construction started on this house in 1997 and completed in 1998. A screened in porch was added in 2003.

The Red Willow County Assessor ("the Assessor") determined that assessed value of the Taxpayer's real property was \$311,858 as of the January 1, 2003, assessment date. (E1). This value has three components: an agricultural land value of \$61,420; two residential improvements with associated land; and certain agricultural outbuildings. (E5). The Taxpayer timely filed a protest of that determination and alleged that the property's assessed value was \$218,097.60. (E1). The Red Willow County Board of Equalization ("the Board") denied the protest. (E1).

The Taxpayer filed an appeal of the Board's decision on August 20, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 5, 2003, which the Board answered on October 3, 2003. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on April 16, 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 August 30, 2004. The Taxpayer appeared personally at the hearing and through counsel, Amy M. Svoboda, Esq.. The Board appeared through Philip P. Lyons, the Deputy Red Willow County Attorney. Commissioners Hans, Lore, and Reynolds heard the appeal. Commissioner Reynolds served as the presiding officer. Commissioner Wickersham was excused from the proceedings.

## **II. ISSUES**

The issues before the Commission are (1) whether the Board's decision to deny 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 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's opinion of value is \$246,420.
2. The Taxpayer testified that his costs of construction for the new house totaled \$200,000, plus approximately 10% for the value of the Taxpayer's service as his own General Contractor, and an additional 10% for the value of the Taxpayer's "sweat equity" and that of his son, or approximately \$240,000.
3. The Taxpayer alleged that the proximity of a commercial hog confinement facility, now located within two-miles of the subject property, would have an adverse impact on domestic well water, air quality, traffic, and could lead to an increased presence of rodents.
4. The Taxpayer also alleged that the commercial hog confinement facility has a permit to "chisel surface apply"

waste from the facility within one-half mile of the subject property, which would adversely impact actual or fair market value.

5. The Taxpayer's opinion of value is not supported by an appraisal; by evidence of sale prices of any "comparable" properties; or any other evidence of value.
6. The Taxpayer's opinion that the subject property's value will be adversely impacted in the future is not supported by any evidence.
7. The Taxpayer testified that no waste has been "chiseled in" pursuant to the permit within the one-half mile distance allowed under the permit.
8. The Taxpayer testified that the last domestic water supply tests were conducted by the Nebraska Department of Environmental Quality (NDEQ) approximately 3-years ago, and that the tests did not reveal any problems with water quality.

## **V. ANALYSIS**

The Taxpayer alleged in his protest that the proposed value exceeded actual or fair market value. (E1). The Taxpayer testified in his opinion the subject property's actual or fair market value was \$246,420 as of the assessment date. The Taxpayer adduced no evidence of prices paid for comparable

properties. The burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion. *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).

The Assessor's determination of value consisted of three components. The Assessor attributed \$61,420 of the assessed value to the land component of the subject property, which includes 154-acres of agricultural land valued at 80% of actual or fair market value pursuant to Neb. Rev. Stat. §77-201(1) (Reissue 2003). (E5:5). The Assessor also valued the 2-acres of farm home site at \$5,000 per acre (E5:5); the agricultural outbuildings valued at \$19,443 (E5:5); \$195,145 for the "new house" (E5:2); and \$35,850 for the "old house" (E5:7), all valued at 100% of actual or fair market value pursuant to Neb. Rev. Stat. §77-Reissue 2003). The Assessor, and thereafter the Board, valued the subject property at a total of \$311,858. (E5:1).

The Taxpayer alleges that this appeal is comparable to the Court of Appeals decision in *Livingston v. Jefferson County*, 10 Neb.App. 934, 640 N.W.2d 426 (2002). The Taxpayer in *Livingston*, however, adduced evidence of the impact on actual or fair market value in the form of a "fee appraisal." No such evidence was adduced in this matter. *Livingston* is inapplicable under these circumstances.

The Taxpayer has adduced no evidence that the Board's decision was incorrect and either unreasonable or arbitrary. 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 decision 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. The burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion. *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).
6. 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 either incorrect and either unreasonable or arbitrary.
8. The Taxpayer has also failed to adduce clear and convincing evidence that the Board's determination of value was unreasonable.
9. The Board's decision must accordingly be affirmed.

**VII.  
ORDER**

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

1. The Red Willow County Board of Equalization's Order setting the assessed value of the subject property for tax year 2003 is affirmed.
2. The Taxpayer's real property legally described as SW¼ in Section 3, Township 1, Range 28, in Red Willow County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$ 61,420
Improvements	\$250,438
Total	\$311,858
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 Red Willow County Treasurer, and the Red Willow County

Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).

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 30<sup>th</sup> day of August, 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) (Reissue 2003).

Signed and sealed this 31<sup>st</sup> day of August, 2004.

**SEAL**

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*Mark P. Reynolds, Vice-Chair*