

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

ROBERT W. UERLING,	)	
	)	
Appellant,	)	CASE NO. 03A-97
	)	
vs.	)	
	)	FINDINGS AND
RED WILLOW COUNTY BOARD OF	)	FINAL ORDER
EQUALIZATION,	)	
	)	
Appellee.	)	

Appearances:

For the Appellant: Allen L. Fugate, Esq.  
Attorney at Law  
P.O. Box 82  
North Platte, NE 69103

For the Appellee: G. Peter Burger, Esq.  
Special Appointed Counsel  
P.O. Box 1205  
McCook, NE 69001

Before: Commissioners Hans, Lore, and Reynolds.

**I.  
STATEMENT OF THE CASE**

Robert W. Uerling ("the Taxpayer") owns a 151-acre tract of land legally described as the NE¼ of Section 31, Township 3, Range 28, in Red Willow County, Nebraska. (E10:2). The tract of land includes 32-acres of irrigate agricultural land. The assessed value of the balance of the real property is not at issue.

The Red Willow County Assessor ("the Assessor") determined that 80% of the actual or fair market value of the Taxpayer's real property was \$23,565 as of the January 1, 2003, assessment

date. (E10:2). The Taxpayer timely filed a protest of that determination and alleged that 80% of the actual or fair market value of the property was \$13,875. (E10:2; 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 27, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 10, 2003, which the Board answered on October 13, 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, Allen L. Fugate, Esq.. The Board appeared through G. Peter Burger, Special Appointed Counsel. 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 80% of actual or fair market value for the 32-acre tract of land designated as irrigated land is \$13,785.
2. 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.

**V.  
ANALYSIS**

The only issue is the actual or fair market value of the 32-acres of irrigated land on the subject property. The Taxpayer alleges that his property was improperly classified as irrigated land, and accordingly valued in excess of 80% of actual or fair market value, since water was not available for irrigation in 2003. Irrigated land is land upon which irrigation is applied for the production of grass or other crops. Title 350, Neb. Admin. Code, ch. 14, §002.37C (07/02).

The 32-acre tract of land was irrigated in 2002. The assessment date is January 1, 2003. Neb. Rev. Stat. §77-1301(1) (Reissue 2003). The Assessor was required to certify her determination of the January 1, 2003, assessed values on March 19, 2003. Neb. Rev. Stat. §77-1303 (Reissue 2003).

The Taxpayer was not notified until May, 2003 that no water would be available for irrigation purposes for his property during 2003. (E4). The Board's determination of value was also as of the January 1, 2003, assessment date. There was no clear and convincing evidence as of January 1, 2003, that the Taxpayer would not have water available for irrigation purposes.

The Taxpayer alleges that his property should be classified as dry land. However, his land is not dry land, but land to which water was and may be artificially applied, if water is available. The Taxpayer adduced no evidence of prices paid for other properties which lacked water for 2003, but which would be irrigated if water were available. Finally, 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 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 the NE  $\frac{1}{4}$  of Section 31, Township 3, Range 28, in Red Willow County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$62,450
Improvements	\$15,765
Total	\$78,215

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 Hans 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 Lore 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*