

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

RODNEY E. CLAUSEN,)	
)	
Appellant,)	CASE NO. 04A-3
)	
vs.)	
)	FINDINGS AND FINAL ORDER
HOWARD COUNTY BOARD OF)	DISMISSING APPEAL AT THE CLOSE
EQUALIZATION,)	OF THE TAXPAYER'S CASE
)	
Appellee.)	

SUMMARY OF DECISION

Rodney E. Clausen ("the Taxpayer") protested the 2004 value proposed by the Howard County Assessor ("the Assessor") for the Taxpayer's agricultural and non-agricultural real property. The Howard County Board of Equalization ("the Board") granted the Taxpayer's protest only in part, and the Taxpayer appealed. The Board moved to dismiss the appeal at the close of the Taxpayer's case for failure to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary.

**I.
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.

II.
STATEMENT OF THE CASE

The Taxpayer owns a 120-acre tract of land legally described as NW $\frac{1}{4}$ NE $\frac{1}{4}$ & N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 36, Township 14, Range 11, Howard County, Nebraska. (E16:1). The tract of land is improved with a mobile home designated as a single-family residence with 448-square feet of above-grade finished living area built in 1996. The home is sited on a one-acre "cabin site," there are three acres of "roads and ditches" with no value, and 11 acres of waste with an assessed value of \$95 per acre. The remaining 105 acres are assessed as "agricultural land." (The entire tract of land with improvements will be referred to as the "subject property.")

The Assessor initially determined that 100% of the actual or fair market value of the improvements and 100% non-agricultural land and 80% of the actual or fair market value of the agricultural land component was \$192,287 as of the January 1, 2004, assessment date. (E1). The Taxpayer timely protested that determination and alleged that the subject property, at 76% of actual or fair market value for the agricultural land component and 100% of actual or fair market value for the non-agricultural components was \$139,688. (E1). The Assessor then recommended that the Board reduce the proposed value to \$182,183, and the Board adopted the recommendation. (E1).

The Taxpayer appealed the Board's decision on July 27, 2004. The Commission served a Notice in Lieu of Summons on the Board

which the Board answered. The Commission issued an Order for Hearing and Notice of Hearing and served a copy of each document 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 August 16, 2005. The Taxpayer appeared personally at the hearing. The Board appeared through Karin L. Noakes, Esq., the Howard County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Wickersham served as the presiding officer.

The Board moved to dismiss the Taxpayer's appeal at the close of his case-in-chief for failure to prove a *prima facie* case.

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 either unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9). 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 values were 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 actual or fair market value is limited to opinion testimony.
2. If this testimony is accepted, the Taxpayer's evidence amounts to a difference of opinion.

**V.
ANALYSIS**

Agricultural land is to be valued at 80% of actual or fair market value. Neb. Rev. Stat. §77-201(2) (Cum. Supp. 2004). Non-agricultural land is to be valued at 100% of actual or fair market value. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004). The Taxpayer alleges that the Board's values exceed the level of taxable value for the subject property.

The Taxpayer, a farmer and registered appraiser, disputes the Board's determination of the value of the cabin, the value of the pole building, the value of the "loafing shed" used as a shop, and the value of the storage bin, and the value of the land component of the subject property. (E1; E2; E16:1 - 2). The

Taxpayer further testified that the value of the land component as determined by the Board failed to account for the 11-acres of canal, which the Taxpayer contends has no value; the fact that the fields are small and split by the Turkey Creek and the canal; and the higher costs of farming associated with these features.

The Taxpayer testified that accounting for these factors his opinion of actual or fair market value was \$205,000 as of the assessment date. (E2:2). 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). Opinion testimony standing alone, however, does not overcome the statutory presumption. *Garvey Elevator, supra*. Furthermore, assuming without deciding that the Taxpayer's determination of value for each component are correct, the difference between the Taxpayer's opinion of actual or fair market value and the Board's determination of taxable value based on actual or fair market value is 10%. Evidence amounting to a difference of opinion does not satisfy the burden of proof imposed on a complaining taxpayer. *US Ecology, supra*. The Taxpayer testified that two appraisals with a 10% differential would not constitute a material difference in opinions.

In addition the four "impaired" comparables (Sales 1 through 4) offered by the Taxpayer would support a determination of land

value for the subject property higher than that proposed by the Taxpayer. (E2:5).

**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) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).
3. The Board is presumed to have faithfully performed its official duties. The Board is also presumed to have acted upon sufficient competent evidence to justify its decisions. 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 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) (Cum. Supp. 2004).

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Board's Motion to Dismiss is granted.
2. The Taxpayer's real property legally described as NW $\frac{1}{4}$ NE $\frac{1}{4}$ & N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 36, Township 14, Range 11, Howard County, Nebraska, shall be valued as follows for tax year 2004, as determined by the Board:

Land	\$137,876
Improvements	\$ 44,307
Total	\$182,183

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 Howard County Treasurer, and the Howard County Assessor, pursuant to Neb. Rev. Stat. §77-5016(9) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).
5. This decision shall only be applicable to tax year 2004.

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 16th day of August, 2005. The same were approved and confirmed by Commissioners Lore, Reynolds and Wickersham and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §7).

Signed and sealed this 16th day of August, 2005.

SEAL

Wm. R. Wickersham, Chair

ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE APPEAL MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW IN NEBRASKA REVISED STATUTE §77-5019 (REISSUE 2003, AS AMENDED BY 2005 NEB. LAWS, L.B. 15, §11). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.