

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

KERMIT LEE,	)	
	)	
Appellant,	)	CASE NO. 04R-50
	)	
vs.	)	FINDINGS AND ORDER
	)	REVERSING, IN PART, THE DECISION
DAWSON COUNTY BOARD OF	)	OF THE DAWSON COUNTY BOARD OF
EQUALIZATION,	)	EQUALIZATION
	)	
Appellee.	)	

The above-captioned case was called for a hearing on the merits of an appeal by Kermit Lee to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Hampton Inn, 200 Platte Oasis Parkway, in the City of North Platte, Lincoln County Nebraska, on June 23, 2005, amended to June 22, 2005, pursuant to a Notice and Order for Hearing issued February 8, 2005. Commissioners Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Kermit Lee ("the Taxpayer") appeared at the hearing without counsel.

The Dawson County Board of Equalization ("the County Board") appeared through counsel, Curt R. McBride, Esq., a Chief Deputy County Attorney for Dawson County, Nebraska.

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Reissue 2003, as amended by 2005 Neb. Laws L.B. 15 §10) to state its final decision concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case is as follows.

**I.**  
**STANDARD OF REVIEW**

The Taxpayer, in order to prevail, is required to demonstrate that the decision of the County Board was incorrect and arbitrary or unreasonable. Neb. Rev. Stat. §77-5016(8)(Cum. Supp. 2004, as amended by 2005 Neb. Laws L.B. 15 §9). The presumption created by the statute can be overcome if the Taxpayer shows by clear and convincing evidence that the County Board either failed to faithfully perform its official duties or that the County Board failed to act upon sufficient competent evidence in making its decision. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). It is the Taxpayer's burden to overcome the presumption with clear and convincing evidence of more than a difference of opinion. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the value as determined by the County Board was unreasonable. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

**II.**  
**FINDINGS**

The Commission finds and determines that:

**A.**  
**PROCEDURAL FINDINGS**

1. The Taxpayer is the owner of record of certain real property described in the appeal as Irregular tract in SW1/4, S&W of CNPPID Right of Way, 3.52 acres in Section 27,

Township 9 North, Range 23 West 6th PM, Dawson County, Nebraska (“the subject property”).

- 2. The actual or fair market value of the subject property, placed on the assessment roll as of January 1, 2004, ("the assessment date") by the Dawson County Assessor was:

Land value	\$116,300.00
Improvement value	<u>\$ 67,600.00</u>
Total value	<u>\$183,900.00.</u>

- 3. The Taxpayer timely protested that value to the County Board. The Taxpayer proposed the following value for the subject property:

Land value	\$13,500.00
Improvement value	<u>\$54,500.00</u>
Total value	<u>\$68,000.00.</u>

- 4. The County Board denied the protest. (E:1)
- 5. The Taxpayer timely filed an appeal of that decision to the Commission.
- 6. The County Board was served with a Notice in Lieu of Summons, and duly answered that Notice.
- 7. A Notice and Order for Hearing issued on February 8, 2005, set a hearing of the Taxpayer's appeal for June 23, 2005, amended to June 22, 2005, at 12:00 p.m. MDST.
- 8. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Notice and Order for Hearing was served on all parties.

**B.**  
**SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS**

1. Approximately 1.52 acres of the subject property is improved with a 1,040 square foot one story single family residence built in 1979. Taxable value of the residence was not disputed at the hearing.
2. Approximately 2 acres of the subject property is dry crop agricultural land and horticultural land.
3. The Taxpayer has adduced sufficient, clear and convincing evidence to overcome the statutory presumption in favor of the County Board.
4. Based on the entire record before it, the Commission finds and determines that 80 % of the actual or fair market value of the agricultural land and horticultural land with the actual or fair market value of the other components of the subject property for the tax year 2004 is:

Agricultural land	\$ 1,180.00
Recreational land	\$112,500.00
Improvement value	<u>\$ 67,600.00</u>
Total taxable value	<u><u>\$181,280.00.</u></u>

5. The taxable value of the subject property as of the assessment date determined by the County Board is not supported by the evidence.
6. The decision of the County Board was incorrect, arbitrary and unreasonable.
7. The decision of the County Board should be vacated and reversed.

### III. CONCLUSIONS OF LAW

1. Subject matter jurisdiction of the Commission is over all issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998)
2. The Commission has jurisdiction over the parties and the subject matter of this appeal.
3. The Commission, while making a decision, may not consider testimony, records, documents or other evidence which is not a part of the hearing record except those identified in the Commissions rules and regulations or Section 77-5016 (3). Neb. Rev. Stat. §77-5016(3) (Cum. Supp 2004, as amended by 2005 Neb. Laws L.B. 15 §9).
4. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004).
5. Agricultural land and horticultural land means land which is primarily used for the production of agricultural or horticultural products, including wasteland lying in or adjacent to and in common ownership or management with land used for the production of agricultural or horticultural products. Land retained or protected for future agricultural or horticultural uses under a conservation easement as provided in the Conservation and Preservation Easements Act shall be defined as agricultural land or horticultural land. Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land. Land that is zoned predominantly for purposes other than

agricultural or horticultural use shall not be assessed as agricultural land or horticultural land. Neb. Rev. Stat. §77-1359(1)(Reissue 2003)

6. Agricultural or horticultural products include grain and feed crops; forages and sod crops; animal production, including breeding, feeding, or grazing of cattle, horses, swine, sheep, goats, bees, or poultry; and fruits, vegetables, flowers, seeds, grasses, trees, timber, and other horticultural crops. Neb. Rev. Stat. §77-1359(2)( Reissue 2003).
7. Farm home site shall mean not more than one acre of land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes, and such improvements include utility connections, water and sewer systems, and improved access to a public road; and Farm site shall mean the portion of land contiguous to land actively devoted to agriculture which includes improvements that are agricultural or horticultural in nature, including any uninhabitable or unimproved farm home site. Neb. Rev. Stat. §77-1359(2)( Reissue 2003).
8. “Actual value is 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 a 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. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.” Neb. Rev. Stat. §77-112 (Reissue 2003).
9. Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Neb. Rev. Stat. §77-112 (Reissue 2003).

10. “Actual value, market value, and fair market value mean exactly the same thing.”  
*Omaha Country Club V. Douglas County Board of Equalization et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 8241 ( 2002).
11. The Taxpayer must adduce evidence establishing that the action of the County Board was incorrect and unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp 2004, as amended by 2005 Neb. Laws L.B. 15 §9). The Nebraska Supreme Court, in considering similar language, has held that “There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence on appeal to the contrary. From that point on, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.” *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523, (2001).
12. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736, (2000).
13. The term "unreasonable" can be applied to a decision of an administrative agency only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447, (1999).

14. The Court has also held that “In an appeal to the county board of equalization or to [the Tax Equalization and Review Commission] and from the [Commission] to this court, the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment.” *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523, (2001).
15. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).
16. “It is the function of the county board of equalization to determine the actual value of locally assessed property for tax purposes. In carrying out this function, the county board must give effect to the constitutional requirement that taxes be levied uniformly and proportionately upon all taxable property in the county. Individual discrepancies and inequalities within the county must be corrected and equalized by the county board of equalization.” *AT & T Information Systems, Inc. v. State Bd. of Equalization and Assessment*, 237 Neb. 591, 595, 467 N.W.2d 55, 58, (1991).
17. “A landowner is entitled to have his property assessed uniformly and proportionately with other property even though the result may be that it is assessed at less than actual value. *Konicek v. Board of Equalization*, 212 Neb. 648, 324 N.W.2d 815 (1982).



18. Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.” *Benyon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534, (1983).

#### IV. ANALYSIS

The Taxpayer made two assertions. First, the Taxpayer asserted that 2 acres of the 3.52 acres of the subject property is dry crop agricultural land and horticultural land to be valued as other dry crop land in Dawson County at 80% of its actual or fair market value. The Taxpayers testified that the exclusive use of the tract was a dry crop land by a tenant. The Taxpayers testified that they had acquired the tract as a gift but that the grantor had reserved use of the property during that person's lifetime. The two acre tract is farmed by a tenant in conjunction with a 76.3 acre contiguous tract owned by the grantor. The contiguous tract is described in Exhibit 2 at page 2 and depicted in Exhibit 2 at page 3. The Taxpayers do not receive income from the dry land crops grown on the tract and do not manage the land. The Assessor for Dawson County testified that as dry crop land the two acre tract should be valued for taxation at \$590.00 per acre. Two acres of the subject property are agricultural land and horticultural land. The equalized assessed value of those two acres is \$1,180.00.

The second contention of the Taxpayers is that the remaining 1.52 acre tract should be valued as a farm home site. Improvements on that tract are residential in nature and the Taxpayers do not conduct farming operations on the adjoining land. There is no evidence that the Taxpayers conduct any farming operations. A Farm home site is defined as a tract not greater than one acre of land contiguous to a farm site. Neb. Rev. Stat. 77-1359 (Reissue 2003). A

farm site is that portion of land contiguous to land actively devoted to agriculture which includes improvements that are agricultural and horticultural in nature. *Id.* There are no improvements on the subject property which are agricultural and horticultural in nature. No part of the subject property is a farm site as defined, and therefore no part of it is a farm home site.

The Taxpayers contend that the 1.52 acres devoted to residential use should be valued uniformly with other home sites at \$10,000.00 for the first acre and \$1,250.00 for each succeeding acre or part of an acre. (E8:1). The Assessor testified that all home sites valued on that basis did not have access to canal or lake frontage. The Subject property is located adjacent to an irrigation canal with a boat dock. The canal has irregular sides and has the appearance of an extension of the lake into which the canal drains. (E12). The subject property is adjacent to the lake and has access to the lake through the canal. Recreational cabins have been developed on the canal including two immediately across from the subject property. The Assessor testified that the subject property had been assessed using values uniformly applied to all other deeded tracts, with frontage on the canal or lake. The Assessor testified that values placed on the deeded residential sites with frontage on the canal or lake was determined based on a sales study. The Taxpayers did not offer evidence of value independent of their assertion that the tract should be valued uniformly with tracts without frontage on the canal or lake. The value placed on the 1.52 acre residential tract by the County Board was not unreasonable and was equalized with comparable properties.

**V.  
ORDER**

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

1. That the decision of the County Board determining the actual or fair market value of the subject property as of the assessment date, January 1, 2004, as follows:

Land value	\$116,300.00
Improvement value	<u>\$ 67,600.00</u>
Total value	<u>\$183,900.00</u>

is vacated and reversed.

2. That the assessed value of the subject property for the tax year 2004 shall be:

Agricultural land	\$ 1,180.00
Residential land	\$112,500.00
Improvement value	<u>\$ 67,600.00</u>
Total value	<u>\$181,280.00.</u>

3. That this decision, if no appeal is timely filed, shall be certified to the Dawson County Treasurer, and the Dawson County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2003).
4. That any request for relief, by any party, which is not specifically provided for by this order is denied.
5. That each party is to bear its own costs in this matter.
6. That this decision shall only be applicable to tax year 2004.

7. This order is effective for purposes of appeal July 1, 2005.

**Signed and Sealed.** July 1, 2005.

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Wm. R. Wickersham, Chairperson

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Susan S. Lore, Commissioner

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Robert L. Hans, Commissioner

**SEAL**

**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 PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW CONTAINED IN NEB. REV. STAT. §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.**