

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

RICHARD H. STRUEBING,	)	
	)	
Appellant,	)	CASE NO. 04A-4
	)	
vs.	)	
	)	
BUTLER COUNTY BOARD OF	)	FINDINGS AND FINAL ORDER
EQUALIZATION,	)	AFFIRMING THE DECISION OF
	)	COUNTY BOARD OF EQUALIZATION
	)	
Appellee.	)	

Appearances:

For the Appellant: James M. Egr, Esq.  
P.O. Box 46  
David City, NE 69632

For the Appellee: C. Jo Petersen, Esq.  
Butler County Attorney  
451 North 5th  
David City, NE 69632

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

**I.  
STATEMENT OF THE CASE**

Richard H. Struebing ("the Taxpayer") owns a 241.82-acre tract of land legally described as the SW $\frac{1}{4}$  and the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 2, Township 14, Range 2, in Butler County, Nebraska. (E11:3). The tract of land is improved, however the assessed value of the improvements and the assessed value of the majority of the land component is not at issue. The only component of the subject property at issue is a 10.00 acre tract of land legally described as that part of the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 2, Township 4, Range 2, subject to a "Construction, Storage and Flowage" easement for the Upper Big Blue Natural Resources District.

(E2). The tract of land is under water and forms part of the Struebing Dam Project for the Central Butler Water Management Area. (E2).

The Butler County Assessor ("the Assessor") determined that 80% of the actual or fair market value for this 10-acre tract was \$1,000 per acre as of the January 1, 2004, assessment date.

(E11:3). The Taxpayer timely protested that determination and alleged that 80% of the subject property's actual or fair market value was \$300 per acre. (E1). The Butler County Board of Equalization ("the Board") denied the protest. (E1).

The Taxpayer appealed the Board's decision on August 3, 2004. The Commission served a Notice in Lieu of Summons on the Board on August 5, 2004, which the Board answered on August 25, 2004. The Commission issued an Amended Order for Hearing and Amended Notice of Hearing to each of the Parties on December 10, 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 Lincoln, Lancaster County, Nebraska, on March 7, 2005. The Taxpayer appeared personally at the hearing, and with counsel, James M. Egr, Esq.. The Board appeared through C. Jo Petersen, Deputy Butler County Attorney.

Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer.

## **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) (Cum. Supp. 2004)). 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 Parties stipulated that the Commission only had subject matter jurisdiction over a ten-acre tract of land legally described as that part of the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 2, Township 14, Range 2, Butler County, Nebraska, which is subject to a "Construction, Storage, and Flowage" easement for the Upper Big Blue Natural Resources District. (Appeal Form, E2).
2. The Taxpayer's only evidence of value is opinion testimony that this land has an actual or fair market value of \$300 per acre.

**V.  
ANALYSIS**

The Taxpayer's only evidence of value is the owner's opinion of value. 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 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. *US Ecology, Inc. v. Boyd County Bd. of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).

The Taxpayer also alleges that the subject property should be valued as waste. "Wasteland" is defined as "those land types that cannot be used economically and are not suitable for recreational or agricultural use or production. Some of the those land types would be blowouts, riverwash (recent unstabilized alluvial deposits), marshes, badlands, large deep gullies (including streambeds and banks), bluffs, rockland, gravel areas, and salt flats. To qualify for wasteland the land must be lying in or adjacent to and in common ownership or management with land used for the production of agricultural products. Some of these areas could be developed or reclaimed for some beneficial use by land shaping, revegetation, drainage, or possibly other special practices. Until they are reclaimed, developed, or restored to agricultural production or recreational use, they should be classified as wasteland. Other land types which may be classified as wasteland are the permanent easement acres associated with the Bureau of Reclamation or Irrigation Districts. These areas are defined as open canals or ditches, laterals, drains, and service roads for the canal system. Assessors need to verify or be aware of the type of deed or easement that may be filed for these areas before making any

determination or classification." 350 Neb. Admin. Code, ch. 14, §002.55 (03/2004). The regulations also provide "Large lakes created by watershed dams may have different values. Watershed dams are comprised of various components that will not necessarily be classified differently from the surrounding land. The components include a permanent water basin and silt pool, a temporary storage basin, the dam and the spillway. The classification of these areas may vary for each location. A value for each individual watershed will need to be established." 350 Neb. Admin. Code, ch. 14, §005.01F (03/2004). Finally, the regulations provide "Reservoir or lakes that are developed for or have recreational potential will be classified as such. An analysis will be completed to reflect the current market value. These lakes will occur in an agricultural land area and will be separate from the agricultural land classification. When classifying these lakes, zoning regulations should be checked for compliance." 350 Neb. Admin. Code, ch. 14, §005.01H (03/2004). The Assessor testified that in valuing the subject property she placed the greatest weight on this regulation.

The Assessor is required to value real property at actual or fair market value. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004). Actual or fair market 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) (emphasis added).

The Taxpayer has failed to adduce sufficient clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary. 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) (Cum. Supp. 2004).
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. 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 decision must accordingly be affirmed.

**VII.  
ORDER**

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

1. The Butler County Board of Equalization's Order setting the assessed value of the subject property for tax year 2004 is affirmed.
2. The Taxpayer's real property legally described as a ten acre tract of land in the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 2, Township 14, Range 2, Butler County, Nebraska, subject to a "Construction, Storage and Flowage" easement for the Upper Big Blue Natural Resources District, shall be valued as follows for tax year 2004 as determined by the Board:



Land	\$10,000
Improvements	\$ -0-
Total	\$10,000

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 Butler County Treasurer, and the Butler County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004).
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 THIS 7<sup>TH</sup> DAY OF MARCH, 2005.**

**I certify that Commissioner Lore made and entered the above and foregoing Findings and Orders in this appeal on the 7<sup>th</sup> day of March, 2005. The same were approved and confirmed by Commissioners Hans, 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).**

Signed and sealed this 8<sup>th</sup> day of March, 2005.

**SEAL**

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*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). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.

**PLEASE NOTE:** You will only be notified of a change in assessed value for your property for tax year 2005 if the 2005 assessed value differs from the 2004 assessed value as determined by your Assessor or County Board of Equalization. The Commission's decision has no impact on that determination. You should contact your Assessor's Office after March 19, 2005, to determine your property's assessed value for 2005. If you are unsatisfied with that value, you must file a protest before July 1, 2005. If you fail to file a protest, there can be no change to the Assessor's determination of the 2005 assessed value for your property.