

COPY

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

ROLFSMEIER CATTLE CO., INC.,)	
)	
Appellant,)	CASE NO. 04C-31
)	04C-32
vs.)	
)	FINDINGS AND FINAL ORDER
SEWARD COUNTY BOARD OF)	DISMISSING THE APPEALS AT THE
EQUALIZATION,)	CLOSE OF THE TAXPAYER'S
)	CASE-IN-CHIEF
Appellee.)	

SUMMARY OF DECISION

Rolfsmeier Cattle Co., Inc., appeals decisions of the Seward County Board of Equalization. That Board granted one of the Taxpayer's protests in part, but denied the second and increased the 2004 assessed value on that parcel. The Taxpayer appealed each decision. The Board moved to dismiss the appeals based on the absence of any evidence that the Board's decisions were incorrect or unreasonable or arbitrary.

**II.
ISSUES**

The issues before the Commission are (1) whether the Board's decisions were incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determinations of value in each case were unreasonable.

III.
STATEMENT OF THE CASE

The Taxpayer owns two tracts of land located in Seward County, Nebraska. The first, the subject of the appeal in Case Number 04C-31, is a 160-acre tract of agricultural land legally described as the SE $\frac{1}{4}$ of Section 18, Township 10, Range 4. (E8:1). This tract of land is subject to "special value" pursuant to Neb. Rev. Stat. §77-201(3) (Cum. Supp. 2004). (E8:2). The Assessor determined that 80% of the value of the land if the land were available only for agricultural or horticultural purposes or uses without regard to the actual value the land would have for other purposes or uses ("assessed value") of this tract of land was \$143,962 as of the January 1, 2004, assessment date. Neb. Rev. Stat. §77-1343(6) (Cum. Supp. 2004) (E8:1). The second tract of land, the subject of the appeal in Case Number 04C-32, is a 160-acre tract of agricultural land legally described as the SE $\frac{1}{4}$ of Section 36, Township 11, Range 3. (E2). The Assessor determined that the assessed value of this tract of land was \$143,962. (E2).

The Taxpayer timely protested each determination and alleged that the subject property's assessed value should be \$146,567 in Case Number 04C-31, and \$131,605 in Case Number 04C-32. (E1; E2). The Seward County Board of Equalization granted the Taxpayer's protest in part in Case Number 04C-31 and determined that the subject property's assessed value in Case Number 04C-31

was \$159,998, based on land use documented in federal Farm Service Agency records. The Board increased the subject property's assessed value to \$145,078, again based on land use documented in federal Farm Service Agency records. (E2).

The Taxpayer appealed each of the Board's decision on August 12, 2004. The Commission consolidated the appeals and served a Notice in Lieu of Summons on the Board for each appeal on August 17, 2004. The Board later answered out of time, but with the Commission's authorization. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on January 31, 2005. 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 May 17, 2005. The Taxpayer appeared at the hearing through Richard Safarik, one of the corporation's directors and President of the company. The Board appeared through Jonathan D. Crosby, Esq., Deputy Seward County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer.

**IV.
APPLICABLE LAW**

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the Board's decisions were incorrect and (2) that the Board's decisions were 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 adduced no evidence of special value for either tract of agricultural land.
2. The Taxpayer's President testified that he did not dispute the assessed values determined by the Board, but he disagreed with the laws governing the methodology used to determine the Board's assessed values.

V.
ANALYSIS

The Taxpayer adduced no evidence of special value for either tract of agricultural land. The Taxpayer, however, complains of the statutorily prescribed methodology used to determine special value. Such evidence does not overcome the statutory presumption. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

The Taxpayer also complains of the increase over the prior year's assessed values. The market value of real property usually changes from year to year. Changes made to the property since the last assessment will usually affect market value. Occasionally, the prior assessed value may be shown to be incorrect. The prior year's assessed value is therefore not relevant evidence of actual or fair market value in a subsequent year. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988). If the base for calculation of a percentage change is not relevant evidence then any calculation based on it cannot be relevant evidence. The percentage change in assessed value from year to year is therefore not relevant evidence that the current assessed value is incorrect and either unreasonable or arbitrary.

When a Taxpayer fails to adduce any evidence to overcome the statutory presumption, the Board is not required to put on any

evidence. *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). The Board's Motion to Dismiss must accordingly be granted.

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 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. Any land which has an actual value as defined in Section 77-112 reflecting purposes or uses other than agricultural or horticultural use may be assessed as provided in subsection 3 of section 77-201 if the land qualifies for special value as provided by law. Neb. Rev. Stat. §77-1344(1) (Cum. Supp. 2004).
5. The Taxpayer has failed to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Board's decisions must accordingly be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Board's Motion to Dismiss is granted.
2. The Seward County Board of Equalization's Orders setting the subject properties' 2004 assessed values are therefore final.
3. The assessed value of the Taxpayer's real property in Case Number 04C-31, legally described as the SE $\frac{1}{4}$ of Section 18, Township 10, Range 4, Seward County, Nebraska, shall be as follows for tax year 2004 as determined by the Board:

Land	\$159,998
Improvements	\$ -0-
Total	\$159,998

4. The assessed value of the Taxpayer's real property in Case Number 04C-32, legally described as the SE¼ of Section 36, Township 11, Range 3, Seward County, Nebraska, shall be as follows for tax year 2004, as determined by the Board:

Land	\$145,078
Improvements	\$ -0-
Total	\$145,078

5. Any request for relief by any Party not specifically granted by this Order is denied.
6. This decision, if no appeal is filed, shall be certified to the Seward County Treasurer, and the Seward County Assessor, pursuant to Neb. Rev. Stat. §77-5016(9) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).
7. This decision shall only be applicable to tax year 2004.
8. 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 17th day of May, 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, as amended by 2005 Neb. Laws, L.B. 15, §7).

Signed and sealed this 17th day of May, 2005.



SEAL

Wm. R. Wickersham
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.

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 on or after June 1, and 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.