

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

JAMES A. WIDTFELDT and JAMES)	CASE NO.	04A-114
WIDTFELDT TRUST ,)		04A-115
)		04R-145
Appellants,)		04R-146
)		
vs.)		
)	FINDINGS AND FINAL ORDER	
HOLT COUNTY BOARD OF)	DISMISSING APPEAL AT THE CLOSE	
EQUALIZATION,)	OF THE TAXPAYER'S	
)	CASE-IN-CHIEF	
Appellee.)		

SUMMARY OF DECISION

James A. Widtfelddt, individually and as Trustee, owns four parcels of real property in Holt County, Nebraska. The Holt County Assessor ("the Assessor") proposed certain values for that property for purposes of real property taxation. The Taxpayers protested the proposed values to the Holt County Board of Equalization ("the Board"). The Board denied the protests, and the Taxpayers appeal.

**I.
ISSUES**

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

II.
STATEMENT OF THE CASE

The Taxpayer appealed each of the Board's decisions on August 25, 2005. The Commission served a Notice in Lieu of Summons on the Board for each appeal, which the Board answered. The Commission issued an Order for Hearing and Notice of Hearing in each appeal, and served a copy of each document on each of the Parties. The Commission, pursuant to the Notice of Hearing, called the cases for a hearing on the merits of the appeals in the City of Lincoln, Lancaster County, Nebraska, on October 6, 2005. The Taxpayers appeared personally at the hearing. The Board appeared through Thomas P. Herzog, the Holt County Attorney. Commissioners Hans, Lore, and Reynolds heard the appeals. Commissioner Reynolds served as the presiding officer. Commissioner Wickersham was excused from the proceedings.

The Commission afforded the Taxpayers the opportunity to present evidence and argument. The Commission also afforded the Board the opportunity to cross-examine the Taxpayers as required by law. The Board, at the close of the Taxpayers' case-in-chief, moved to dismiss the appeals for failure of the Taxpayers to adduce any evidence that the Board's decisions were incorrect and either unreasonable or arbitrary.

III.
APPLICABLE LAW

The Taxpayers are required to demonstrate by clear and convincing evidence (1) that the Board's decisions were incorrect and (2) that the Board's decisions were 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 Taxpayers, 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 Taxpayers' only evidence of actual or fair market value was opinion testimony.
2. The Taxpayers' opinion testimony is not supported by any evidence of prices paid for comparable properties; assessed values of comparable properties; or any evidence from which

the subject properties' values could be derived under the Cost or Income Approaches.

V.
ANALYSIS

The Taxpayers adduced opinion testimony that the subject properties were overvalued. 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 alone, however, does not satisfy the burden of proof imposed on the complaining taxpayer unless the taxpayer establishes 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 Taxpayers alleged among other things that the subject properties' values were adversely impacted by improper management of federal farm programs, and government subsidies in particular; federal "like kind" exchange provisions; zoning and use restrictions; World Trade Organization Orders; the federal inheritance tax provisions; racial animosity; and other factors.

The Taxpayers, however, failed to quantify the impact of these factors on the subject properties' actual or fair market values.

The Taxpayers failed to adduce any clear and convincing evidence that the Board's decisions were incorrect and either unreasonable or arbitrary. 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).

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 Taxpayers present

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 Taxpayers. *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 Taxpayers failed to adduce any evidence that the Board's decisions were incorrect and either unreasonable or arbitrary. The Board's Motion to Dismiss the appeals must accordingly be granted.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Board's Motion to Dismiss these appeals is granted.

2. The Taxpayer's real property in Case Number 04A-114, consisting of a 320-acre tract of agricultural land legally described as the E½ of Section 26, Township 33, Range 13, in Holt County, Nebraska, shall be valued as follows for tax year 2004, as determined by the Board:

Land	\$79,430
Improvements	\$ -0-
Total	\$79,430

3. The Taxpayer's real property in Case Number 04A-115, consisting of an 80 acre tract of land legally described as E½SE¼ of Section 27, Township 31, Range 13, Holt County, Nebraska, shall be valued as follows for tax year 2004, as determined by the Board:

Land	\$65,600
Improvements	\$ -0-
Total	\$65,600

4. The Taxpayer's real property in Case Number 04R-145, legally described as Lot 9, Block "K", Neeley's 2nd Addition, Village of Atkinson, Holt County, Nebraska, more commonly known as 510 South Williams, shall be valued as follows for tax year 2004, as determined by the Board:

Land	\$3,080
Improvements	\$5,160
Total	\$8,240

5. The Taxpayer's real property in Case Number 04R-146, legally described as Lot 1, Block 18, Bitney's Addition, Village of Atkinson, Holt County, Nebraska, more commonly known as 308 North Madison, shall be valued as follows for tax year 2004, as determined by the Board:

Land	\$4,125
Improvements	\$5,390
Total	\$9,515

6. Any request for relief by any Party not specifically granted by this Order is denied.

7. This decision, if no appeal is filed, shall be certified to the Holt County Treasurer, and the Holt County Assessor, pursuant to Neb. Rev. Stat. §77-5016(9) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).

8. This decision shall only be applicable to tax year 2004.

9. 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 6th day of October, 2005. 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) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §7).

Signed and sealed this 6th day of October, 2005.

SEAL

Mark P. Reynolds Vice-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.