

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

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|-------------------------|---|------------------------------|
| LELAND F. ASA, TRUSTEE, |) | |
| ALICE E. ASA TRUST, |) | |
| |) | CASE NO. 04A-1 |
| Appellant, |) | 04A-2 |
| |) | |
| vs. |) | |
| |) | FINDINGS AND FINAL ORDER |
| SIOUX COUNTY BOARD OF |) | AFFIRMING DECISIONS OF THE |
| EQUALIZATION, |) | COUNTY BOARD OF EQUALIZATION |
| |) | |
| Appellee. |) | |

SUMMARY OF DECISION

Leland F. Asa, Trustee of the Alice E. Asa Trust ("the Trustee") owns 320 acres of unimproved agricultural land in Sioux County, Nebraska. The Trustee protested the Sioux County Assessor's ("the Assessor") proposed 2004 assessed value to the Sioux County Board of Equalization ("the Board"). The Board granted the Trustee's protest in part, and the Trustee appeals.

Leland F. Asa owns another 80-acre tract of land in Sioux County, Nebraska. The Taxpayer protested the Assessor's proposed 2004 assessed value to Board. The Board denied the protest, and the Taxpayer appeals.

**I.
ISSUES**

The issues before the Commission are (1) whether the Board's decision to deny the Trustee's valuation and inter-county equalization 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 Trustee in Case Number 04A-1 owns a 320-acre tract of unimproved agricultural land legally described as the S½ of Section 11, Township 24, Range 57, in Sioux County, Nebraska. (E^). The Assessor determined that 80% of the subject property's actual or fair market value was \$75,530 as of the January 1, 2004, assessment date. (E1). The Trustee timely protested that determination and alleged that 80% of the subject property's actual or fair market value was \$54,085.29. (E1). The Board granted the protest in part and determined that 80% of the actual or fair market value was \$62,167. (E1).

The Taxpayer in Case Number 04A-2 owns an 80-acre tract of agricultural land legally described as the N½N¼ of Section 21, Township 24, Range 57, in Sioux County, Nebraska. (E3:1). The Assessor determined that 80% of the subject property's actual or fair market value for the agricultural land component and 100% of the actual or fair market value of the non-agricultural land component and improvements totaled \$84,666 as of the January 1, 2004, assessment date. (E1). The Trustee timely protested that determination and alleged that the assessed value should be \$68,627.72. (E1). The Board denied the protest. (E1).

The Trustee/Taxpayer appealed each of the Board's decisions on August 9, 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 cases for a hearing on the merits of the appeal in the City of Scottsbluff, Scotts Bluff County, Nebraska, on September 27, 2005. The Trustee/Taxpayer appeared personally at the hearing with Alice E. Asa. The Board appeared through J. Adam Edmund, Esq., Deputy Sioux County Attorney. Commissioners Hans, Lore, and Reynolds heard the appeal. Commissioner Wickersham was excused from the proceedings. Commissioner Reynolds served as the presiding officer.

III. APPLICABLE LAW

The Trustee/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 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 Trustee/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 value of the improvements in Case Number 04A-2 are not at issue.
2. The Trustee/Taxpayer adduced no evidence of actual or fair market value for either tract of land.
3. The only evidence of 80% of actual or fair market value for the subject properties is the testimony of the Sioux County Assessor.

**V.
ANALYSIS**

The Trustee/Taxpayer adduced no evidence of actual or fair market value for either tract of land. The Trustee/Taxpayer had no opinion of actual or fair market value for either tract of land. The burden of persuasion imposed on the complaining taxpayer requires clear and convincing evidence that the valuation placed upon the subject 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 Trustee/Taxpayer alleged that changes in the level of assessed value for the subject properties changed between 2003 and 2005. 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).

The Trustee/Taxpayer also alleged that his property values were not equalized with comparable properties in Brown and Scotts Bluff Counties. (E1). The Trustee/Taxpayer however, adduced no evidence of the level of assessment of agricultural land within those counties, and adduced no evidence of any comparable properties within those counties.

The only evidence of value contained in the record is the Assessor's testimony, based on her education, training, and experience, that 80% of the agricultural land's actual or fair

market value in Case 04A-1 was \$62,127, and \$60,805 in Case Number 4A-2.

There is no evidence that the Board's decision was incorrect and either unreasonable or arbitrary. Those decisions 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, 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 Trustee 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 Trustee. *Garvey Elevators, Inc. v. Adams County Board*

of Equalization, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).

4. Agricultural land must be valued at 80% of actual or fair market value. Non-agricultural land must be valued at 100% of actual or fair market value. Neb. Rev. Stat. §77-201 (2004 Cum. Supp.).
5. "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).
6. The Trustee has failed to adduce any evidence that the Board's decisions were incorrect and either unreasonable or arbitrary.
7. The Board's decision must accordingly be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Sioux County Board of Equalization's Order setting the subject property's 2004 assessed value is affirmed.
2. The Trustee's real property in Case Number 04A-1, legally described as the S½ of Section 11, Township 24, Range 57, Sioux County, Nebraska, shall be valued as follows for tax year 2004 as determined by the Board:

| | |
|--------------|----------|
| Land | \$62,167 |
| Improvements | \$ -0- |
| Total | \$62,167 |

3. The Taxpayer's real property in Case Number 04A-2, legally described as the N½NE¼ of Section 21, Township 24, Range 57, Sioux County, Nebraska, shall be valued as follows for tax year 2004, as determined by the Board:

| | |
|--------------|----------|
| Land | \$60,805 |
| Improvements | \$23,861 |
| Total | \$84,666 |

4. Any request for relief by any Party not specifically granted by this Order is denied.
5. This decision, if no appeal is filed, shall be certified to the Sioux County Treasurer, and the Sioux County Assessor, pursuant to Neb. Rev. Stat. §77-5016(9) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).

6. This decision shall only be applicable to tax year 2004.
7. 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 27th day of September, 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 27th day of September, 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.