

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

ORVILLE FILSINGER and	)	
MARVIN FILSINGER,	)	
	)	CASE NO. 04A-117
Appellants,	)	
	)	
vs.	)	FINDINGS AND FINAL ORDER
	)	AFFIRMING THE DECISION OF THE
CHEYENNE COUNTY BOARD OF	)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,	)	
	)	
Appellee.	)	

**SUMMARY OF DECISION**

Orville Filsinger and Marvin Filsinger ("the Taxpayers") owns certain unimproved land located in the City of Sidney, Cheyenne County, Nebraska. The Taxpayers protested the Cheyenne County Assessor's ("the Assessor") proposed 2004 value to the Cheyenne County Board of Equalization. The Board granted the Taxpayer's protest but only in part, and the Taxpayer appeals.

**I.  
ISSUES**

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayers' valuation 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 Taxpayers own an unimproved 213.54 acre tract of land legally described as All of the S½ East of the Fort Sidney Road less tracts, of Section 5, Township 13, Range 49, in Cheyenne County, Nebraska. (E5:1). The Parties stipulated that the land is zoned "Agricultural" and is valued as agricultural land. (E5:4). The Assessor determined that 80% of the subject property's actual or fair market value was \$201,600 as of the January 1, 2004, assessment date. (E15:1). The Taxpayer timely protested that determination and alleged that 80% of the subject property's actual or fair market value was \$55,000. (E1). The Board granted the protest in part and found that 80% of the subject property's actual or fair market value amounted to \$171,373 of the assessment date based on the Assessor's recommendation for a reduction in assessed value. (E1).

The Taxpayers appealed the Board's decision on August 25, 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 of the documents on each of the Parties. The Commission, pursuant to the Notice of Hearing, called the case for a hearing on the merits of the appeal in the City of Scottsbluff, Scotts Bluff County, Nebraska, on September 25, 2005. Orville Filsinger, one of the Taxpayers, appeared personally at the hearing, and with

counsel, John Simmons, Esq.. The Board appeared through Paul B. Schaub, the Cheyenne County Attorney. Commissioners Hans, Lore, and Reynolds heard the appeal. Commissioner Reynolds served as the presiding officer. Commissioner Wickersham was excused from the proceedings.

### **III. APPLICABLE LAW**

The Taxpayers are required to demonstrate by clear and convincing evidence (1) that the Board's decision was incorrect and (2) that the Board's decision was 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 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 subject property is zoned "Agricultural" and is valued as agricultural land.
2. The Taxpayers' only evidence of value is opinion testimony.
3. The Taxpayers failed to establish the impact on actual or fair market value of their allegations concerning the subject property's rough and hilly terrain; poor drainage and lack of access.
4. The Taxpayers failed to adduce the Property Record File for their only "comparable" property. The production of this evidence is required by Title 442, Neb. Admin. Code, ch. 5, §020.06.

**V.  
ANALYSIS**

The subject property is a 213.54 acre tract of land located within the city limits of the City of Sidney, Cheyenne County, Nebraska. The property is located approximately one mile from a major interchange of Interstate 80 and State Highway 385. The property is rented out for cattle grazing for part of the year. Residential and commercial properties abut part of the property. (E18:2).

The Taxpayers allege that the subject property's actual or fair market value is adversely impacted due to rough and hilly terrain; poor drainage and a lack of access to roads. The Taxpayers adduced no evidence quantifying the impact of these features on actual or fair market value.

The Taxpayers' only evidence of value is opinion testimony from one of the owners that the property's value for use as pasture land was \$165 per acre. The owner testified that his opinion was based on his purchase of a tract of land. This tract of land is located 5½ miles west of the City of Sidney and the subject property is located on the east side of Sidney within the city limits. The owner testified that the land he purchased is 640-acres in size and that he purchased it four years ago for \$82,500.

The owner testified that the pasture land he purchased was comparable property but of better quality than the subject property. Under professionally accepted mass appraisal methods, no two parcels of land are exactly alike. "They might be identical in size and physical characteristics, but each parcel has a unique location and is likely to differ from other parcels in some way. Typical differences requiring adjustments are in time of sale, location, and physical characteristics." *Property Assessment Valuation*, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, p. 76. When considering the land

component of real property, "comparable" properties share similar use (residential, commercial, industrial, or agricultural), physical characteristics (size, shape, and topography), and location. *Property Assessment Valuation*, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, p. 70 - 76. The Commission's rules require that any party utilizing "comparable" properties produce copies of the Property Record File for the "comparable" property in order to allow an informed decision concerning comparability. Title 442, Neb. Admin. Code, ch. 5, §020.06. (1/2005). In the absence of the Property Record File for the "comparable" property, the Commission cannot conclude that the Taxpayers have adduced clear and convincing evidence that the subject property is truly comparable to the property purchased by the Taxpayer four years ago.

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 complaining taxpayer's burden, however, is not met by a difference of opinion unless it is established by 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 Assessor and the Assessor's Appraiser both testified that the subject property's actual or fair market value was at least \$1,000 per acre as of the assessment date based on sales of comparable agricultural pasture land. This testimony is also supported by uncontroverted evidence that the Taxpayers sold a portion of the subject property to the Cheyenne County Community Center Foundation in 1989 for approximately \$43,430 per acre. (E5:10; E9:1). Finally, the Board, acting upon the Assessor's recommendation, reduced the Assessor's original proposed value by 20% to account for a lack of access.

The Taxpayers have failed to adduce any clear and convincing evidence that the Board's decision was incorrect, unreasonable or arbitrary. The Taxpayers have also failed to adduce any clear and convincing evidence that the Board's determination of value was unreasonable. 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, 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 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. "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).



**VII.  
ORDER**

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

1. The Cheyenne County Board of Equalization's Order setting the subject property's 2004 assessed value is affirmed.
2. The Taxpayer's real property legally described as All of the S½ East of the Fort Sidney Road less tracts of land inside Sidney of Section 5, Township 13, Range 49, in the City of Sidney, Cheyenne County, Nebraska, shall be valued as follows for tax year 2004 as determined by the Board:

Land	\$171,373
Improvements	\$ -0-
Total	\$171,373

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 Cheyenne County Treasurer, and the Cheyenne County Assessor, pursuant to Neb. Rev. Stat. §77-5016(9) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).
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.

I certify that Commissioner Hans made and entered the above and foregoing Findings and Orders in this appeal on the 28<sup>th</sup> 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 29<sup>th</sup> day of September, 2005.

**SEAL**

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*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.