

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

GREENLAND ACRES, INC., A	)	CASE NO.	
Nebraska Corporation,)		
	)	04R-137	04R-138
Appellant,	)	04R-139	04R-140
	)	04R-141	04R-142
vs.	)	04R-143	04R-144
)		
SCOTTS BLUFF COUNTY BOARD OF	)	FINDINGS AND FINAL ORDER	
EQUALIZATION,	)	AFFIRMING DECISION OF THE	
	)	COUNTY BOARD OF EQUALIZATION	
Appellee.)		

SUMMARY OF DECISION

Greenland Acres, Inc., owned eight parcels of land in the Deere Valley Subdivision of Scotts Bluff County, Nebraska. The Corporation protested the Scotts Bluff County Assessor's proposed 2004 values for the land component of each of the eight parcels to the Scotts Bluff County Board of Equalization. The Board denied each of the Corporation's protests, and the Corporation appeals.

**I.
ISSUES**

The issues before the Commission are (1) whether the Board's decisions to deny the Corporation's valuation 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 Corporation owned eight platted lots in the Deere Valley Subdivision in Scotts Bluff County, Nebraska. The lots are legally described as Lots 1, 2, 3, 4, 6, 7, 8, and 9, Deere Valley Subdivision, Scotts Bluff County, Nebraska. All of lots except Lot 9 were vacant as of the January 1, 2004, assessment date. (E1 - E8; E18:26). Lot 9 is a tract of land 2.29 acres in size and is improved with a single-family modular home with 1,736 square feet of above-grade finished living area built in 2002. (E18:28). The value of the improvements are not at issue. (E8).

The Scotts Bluff County Assessor ("the Assessor") determined that as of January 1, 2004, the actual or fair market value of the land component of each of the lots were those amounts set forth below. (E1 - E8). The Corporation timely protested those determinations and alleged that the actual or fair market value of the land component were those amounts set forth below. (E1 - E8). The Scotts Bluff County Board of Equalization ("the Board") denied each of the protests. (E1 - E8).

Case Number	Lot	Assessor	Corporation	Board's Value	Ex. #
04R-137	1	\$ 19,580	\$ 5,720	\$ 19,580	1
04R-138	2	\$ 19,580	\$ 5,720	\$ 19,580	2
04R-139	3	\$ 19,580	\$ 5,720	\$ 19,580	3
04R-140	4	\$ 19,669	\$ 5,746	\$ 19,669	4
04R-141	6	\$ 19,580	\$ 5,720	\$ 19,580	5
04R-142	7	\$ 19,313	\$ 5,642	\$ 19,313	6
04R-143	8	\$ 19,313	\$ 5,642	\$ 19,313	7
04R-144	9	\$ 20,381	\$ 14,885	\$ 20,381	8

The Corporation appealed each of the Board's decisions on August 24, 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 called the cases for a hearing on the merits of each of the appeals in the City of Scottsbluff, Scotts Bluff County, Nebraska, on August 30, 2005. The Corporation appeared at the hearing, through Roger L. Frank, the Corporation's President. The Board appeared through Benjamin L. Shaver, Esq., the Scotts Bluff County Attorney. Commissioners Lore, Reynolds and Wickersham heard the appeal. Commissioner Hans was excused from the proceedings. Commissioner Wickersham served as the presiding officer.

III.
APPLICABLE LAW

The Corporation 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 Corporation, 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. Greenland Acres, Inc., platted the Deere Valley Subdivision prior to the January 1, 2004. The recording of that plat occurred prior to 2001.
2. The use of the property pursuant to the plat and applicable zoning ordinance ("RRE") is primarily for the development of residential estate type lots.

3. None of the lots in the Deere Valley Subdivision had sold prior to the assessment date. The Corporation adduced no evidence of comparable sales or evidence of assessed values of comparable properties.
4. Greenland Acres Inc., transferred title to each of the eight lots to Frank Enterprises, Inc., on September 28, 2004. Roger L. Frank was the President and sole shareholder of Greenland Acres, Inc., and is also the President and sole shareholder of Frank Enterprises, Inc.

V. ANALYSIS

All eight of the Corporation's lots are located in the Deere Valley Subdivision. (E10:2). The subdivision is 19.87 acre tract of land and lot sizes range from 2.17 acres to 2.29 acres. (E10:2). Scotts Bluff County Zoning regulations require that lots less than three acres in size be zoned "RRE" or "Rural Residential Estate." (E10:2). RRE is primarily a residential zoning classification. This zoning classification is intended to "permit the opportunity of developing real estate - type lots which, because of their size, cannot be economically accommodated within urban areas. Although this district may be applied in rural areas, it should be discouraged when in conflict with agricultural uses or on productive agricultural land. Ideally, this district should occur on the outer fringes of urbanized

zoning jurisdictions permitting extension of urban and suburban - residential development." (E10:2). The principle permitted use of this zoning ordinance appears to be primarily residential.

The Corporation requested agricultural land values for each of the lots. (E9). The Corporation's appeals didn't specify whether agricultural value or agricultural special use value was requested. State law provides that land other than agricultural land is to be valued a actual or fair market value. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004). Agricultural land is defined in section 77-1359 and is to be valued at 80% of actual or fair market value. Neb. Rev. Stat. §77-201(2) (Cum. Supp. 2004). Agricultural land and horticultural land "shall mean land which is primarily used for the production of agricultural or horticultural products, including wasteland lying in or adjacent to and in common ownership or management with land used for the production of agricultural or horticultural products . . . Land that is zoned predominantly for purposes other than agricultural or horticultural use shall not be assessed as agricultural land or horticultural land." Neb. Rev. Stat. §77-1359 (Reissue 2003). Applicable regulations also provide that it is the intended use which is controlling. 350 Neb. Admin. Code, ch. 10, 001.05A (3/2004).

The record establishes that the lots were platted and the plat was recorded sometime prior to 2004. The uncontroverted

evidence establishes that as a result of the platting each of the lots is zoned for residential purposes. In addition, there is no evidence that an application for Special Use Value had been made or that the property had qualified for that Special Use Valuation. Without an application and acceptance of that application, Special Use Value cannot be applied. To the extent that the Corporation is requesting agricultural valuation for each of the lots, the request must be denied. The only remaining issue is the actual or fair market value of the lots.

The Corporation's President testified that in his opinion the land components' actual or fair market were those amounts set forth in the chart on page 3 above. An officer or director or owner who is familiar with his or her 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); *Kohl's Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb.App. 809, 813 - 814, 638 N.W.2d 877, 881 (2002).

The Corporation adduced no evidence of prices paid for comparable properties, and adduced no other evidence which might establish actual or fair market value as of the assessment date. The record establishes that the Corporation's principle complaint is the change in the land values for each of the properties over the prior year's assessments. (E9). 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 or subsequent year's assessed values are therefore not relevant evidence of actual or fair market value for the tax year under appeal. *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.

The Corporation's only evidence of actual or fair market value is opinion testimony from its President. This evidence, standing alone, is insufficient to overcome the statutory presumption. *US Ecology, supra.*

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 Corporation 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 Corporation. *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 Corporation failed to adduce clear and convincing 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 Corporation, through its President, moved that the eight appeals be consolidated for purposes for filing, and accordingly requested that seven of its filing fees be reimbursed. Title 442, Neb. Admin. Code, ch. 5, §031 provides that residential appeals may be consolidated when all parcels are unimproved. The Corporation's Motion to consolidate and request for a refund of filing fees is granted in Case Numbers 04R-138, 04R-139, 04R-140, 04R-141, 04R-142, and 04R-143. The request for consolidation of Case Number 04R-144 is denied as that property is improved. A refund in the amount of \$150 will be issued after the appeal deadline has expired or the decision is otherwise final.
2. The Scotts Bluffs County Board of Equalization's Orders setting the subject properties' 2004 assessed values are affirmed.

3. The Corporation's real property in Case Number 04R-137, legally described as Lot 1, Deere Valley Subdivision, Scotts Bluff County, Nebraska, shall be valued as follows for tax year 2004:

Land \$19,580

Improvements \$ -0-

Total \$19,580

4. The Corporation's real property in Case Number 04R-138, legally described as Lot 2, Deere Valley Subdivision, Scotts Bluff County, Nebraska, shall be valued as follows for tax year 2004:

Land \$19,580

Improvements \$ -0-

Total \$19,580

5. The Corporation's real property in Case Number 04R-139, legally described as Lot 3, Deere Valley Subdivision, Scotts Bluff County, Nebraska, shall be valued as follows for tax year 2004:

Land \$19,580

Improvements \$ -0-

Total \$19,580

6. The Corporation's real property in Case Number 04R-140, legally described as Lot 4, Deere Valley Subdivision, Scotts Bluff County, Nebraska, shall be valued as follows for tax year 2004:

Land	\$19,669
Improvements	\$ -0-
Total	\$19,669

7. The Corporation's real property in Case Number 04R-141, legally described as Lot 6, Deere Valley Subdivision, Scotts Bluff County, Nebraska, shall be valued as follows for tax year 2004:

Land	\$19,580
Improvements	\$ -0-
Total	\$19,580

8. The Corporation's real property in Case Number 04R-142, legally described as Lot 7, Deere Valley Subdivision, Scotts Bluff County, Nebraska, shall be valued as follows for tax year 2004:

Land	\$19,313
Improvements	\$ -0-
Total	\$19,313

9. The Corporation's real property in Case Number 04R-143, legally described as Lot 8, Deere Valley Subdivision, Scotts Bluff County, Nebraska, shall be valued as follows for tax year 2004:

Land	\$19,313
Improvements	\$ -0-
Total	\$19,313

10. The Corporation's real property in Case Number 04R-144, legally described as Lot 9, Deere Valley Subdivision, Scotts Bluff County, Nebraska, shall be valued as follows for tax year 2004:

Land	\$ 20,381
Improvements	\$111,501
Total	\$131,882

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

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

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

14. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

I certify that Commissioner Reynolds made and entered the above and foregoing Findings and Orders in this appeal on the 30th day of August, 2005. The same were approved and confirmed by Commissioners Lore 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 31st day of August, 2005.

SEAL

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.