

**NEBRASKA TAX EQUALIZATION  
AND REVIEW COMMISSION**

THE JANDEBEUR COMPANY,	)	
	)	
Appellant,	)	CASE NOs 05A-091, 05A-092, 05A-093,
	)	05A-094, 05A-095, 05A-096, 05A-097,
v.	)	05A-098, 05A-099, 05A-100, 05A-101,
	)	05A-102
LINCOLN COUNTY BOARD OF	)	
EQUALIZATION,	)	DECISION AND ORDER AFFIRMING
	)	THE DECISION OF THE LINCOLN
Appellee.	)	COUNTY BOARD OF EQUALIZATION
	)	

The above-captioned cases were called for a hearing on the merits of appeals by The Jandebour Company to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Hampton Inn, 200 Platte Oasis Parkway, North Platte, Nebraska, on June 27, 2006, pursuant to a Notice and Order for Hearing issued March 7, 2006. Commissioners Wickersham, Warnes, and Lore were present. Commissioner Wickersham presided at the hearing.

Douglas B. Jandebour, President, of The Jandebour Company ("the Taxpayer"), was present with legal counsel Mr. James R. McClymont Jr..

The Lincoln County Board of Equalization ("the County Board") appeared through legal counsel, Joe W. Wright, a Deputy County Attorney for Lincoln County, Nebraska.

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Supp. 2005) to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the

record or in writing. The final decision and order of the Commission in the consolidated cases is as follows.

**I.  
FINDINGS**

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described as shown in the following table ("the subject property").
2. Taxable value of each parcel of the subject property placed on the assessment roll as of January 1, 2005, ("the assessment date") by the Lincoln County Assessor, value as proposed by the Taxpayer in timely protests, and taxable value as determined by the County Board is shown in the following tables:

Case No. 05A-091

Description: An 11.47 acre parcel in the W½ of Section 29, Township 13 North, Range 30 West designated as parcel #86230.05, Lincoln County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$17,205.00	\$3,975.00	\$17,205.00
Improvement	\$-0-	\$-0-	\$-0-
Total	\$17,205.00	\$3,975.00	\$17,205.00

Case No. 05A-092

Description: An 11.11 acre parcel in the W½ of Section 29, Township 13 North, Range 30 West designated as parcel #86230.10, Lincoln County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$3,835.00	\$3,835.00	\$3,835.00
Improvement	\$-0-	\$-0-	\$-0-
Total	\$3,835.00	\$3,835.00	\$3,835.00

Case No. 05A-093

Description: A 10.56 acre parcel in the W½ of Section 29, Township 13 North, Range 30 West designated as parcel #86230.15, Lincoln County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$3,645.00	\$3,645.00	\$3,645.00
Improvement	\$-0-	\$-0-	\$-0-
Total	\$3,645.00	\$3,645.00	\$3,645.00

Case No. 05A-094

Description: A 10.83 acre parcel in the W½ of Section 29, Township 13 North, Range 30 West designated as parcel #86230.20, Lincoln County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$3,765.00	\$3,755.00	\$3,765.00
Improvement	\$-0-	\$-0-	\$-0-
Total	\$3,765.00	\$3,744.00	\$3,765.00

Case No. 05A-095

Description: A 10.43 acre parcel in the W½ of Section 29, Township 13 North, Range 30 West designated as parcel #86230.25, Lincoln County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$3,600.00	\$3,600.00	\$3,600.00
Improvement	\$-0-	\$-0-	\$-0-
Total	\$3,600.00	\$3,600.00	\$3,600.00

Case No. 05A-096

Description: A 13.43 acre parcel in the W½ of Section 29, Township 13 North, Range 30 West designated as parcel #86230.30, Lincoln County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$4,635.00	\$4,635.00	\$4,635.00
Improvement	\$-0-	\$-0-	\$-0-
Total	\$4,635.00	\$4,635.00	\$4,635.00

Case No. 05A-097

Description: A 10.24 acre parcel in the W½ of Section 29, Township 13 North, Range 30 West designated as parcel #86230.35, Lincoln County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$3,535.00	\$3,535.00	\$3,535.00
Improvement	\$-0-	\$-0-	\$-0-
Total	\$3,535.00	\$3,535.00	\$3,535.00

Case No. 05A-098

Description: A 10.25 acre parcel in the W½ of Section 29, Township 13 North, Range 30 West designated as parcel #86230.40, Lincoln County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$3,535.00	\$3,535.00	\$3,535.00
Improvement	\$-0-	\$-0-	\$-0-
Total	\$3,535.00	\$3,535.00	\$3,535.00

Case No. 05A-099

Description: A 10.12 acre parcel in the W½ of Section 29, Township 13 North, Range 30 West designated as parcel #86230.50, Lincoln County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$3,490.00	\$3,490.00	\$3,490.00
Improvement	\$-0-	\$-0-	\$-0-
Total	\$3,490.00	\$3,490.00	\$3,490.00

Case No. 05A-100

Description: A 31.29 acre parcel in the W½ of Section 29, Township 13 North, Range 30 West designated as parcel #86230.55, Lincoln County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$37,740.00	\$15,645.00	\$37,740.00
Improvement	\$41,010.00	\$36,990.90	\$41,010.00
Total	\$78,750.00	\$52,635.90	\$78,750.00

Case No. 05A-101

Description: A 10.16 acre parcel in the W½ of Section 29, Township 13 North, Range 30 West designated as parcel #86230.70, Lincoln County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$3,505.00	\$3,505.00	\$3,505.00
Improvement	\$-0-	\$-0-	\$-0-
Total	\$3,505.00	\$3,505.00	\$3,505.00

Case No. 05A-102

Description: An 11.75 acre parcel in the W½ of Section 29, Township 13 North, Range 30 West designated as parcel #86230.75, , Lincoln County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$35,250.00	\$4,075.00	\$35,250.00
Improvement	\$-0-	\$-0-	\$-0-
Total	\$35,250.00	\$4,075.00	\$35,250.00

3. The Taxpayer timely filed appeals of the County Board's decisions to the Commission.
4. The County Board was served with Notices in Lieu of Summons and duly answered those Notices.
5. The Taxpayer's appeals were consolidated for hearing by order of the Commission.
6. An Order for Hearing and Notice of Hearing issued on March 7, 2006, set a hearing of the Taxpayer's appeals for June 27, 2006, at 8:00 a.m. CDST.
7. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.

8. For reasons stated below, the Taxpayer has not adduced sufficient, clear and convincing evidence that the decisions of the County Board are unreasonable or arbitrary, and the decisions of the County Board should be affirmed.
9. Taxable value of each parcel for the tax year 2005 is:

Case No.05A-091

Land value	\$17,205.00
Total value	<u>\$17,205.00</u>

Case No.05A-092

Land value	\$3,835.00
Total value	<u>\$3,835.00</u>

Case No.05A-093

Land value	\$3,645.00
Total value	<u>\$3,645.00</u>

Case No.05A-094

Land value	\$3,765.00
Total value	<u>\$3,765.00</u>

Case No.05A-095

Land value	\$3,600.00
Total value	<u>\$3,600.00</u>

Case No.05A-096

Land value	\$4,635.00
Total value	<u>\$4,635.00</u>

Case No.05A-097

Land value	\$3,535.00
Total value	<u>\$3,535.00</u>

Case No.05A-098

Land value	\$3,535.00
Total value	<u>\$3,535.00</u>

Case No.05A-099

Land value	\$3,490.00
Total value	<u>\$3,490.00</u>

Case No.05A-100

Land value	\$37,740.00
Improvements	\$41,010.00
Total value	<u>\$78,750.00</u>

Case No.05A-101

Land value	\$3,505.00
Total value	<u>\$3,505.00</u>

Case No.05A-102

Land value	\$35,350.00
Total value	<u>\$35,250.00.</u>



## II. CONCLUSIONS OF LAW

1. Subject matter jurisdiction of the Commission in this appeal is over all issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998)
2. The Commission has jurisdiction over the parties to this appeal.
3. “Actual value is 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 a 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. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.” Neb. Rev. Stat. §77-112 (Reissue 2003).
4. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Neb. Rev. Stat. §77-112 (Reissue 2003).
5. Use of all of the statutory factors for determination of actual value is not required. All that is required is use of the applicable factors. *First National Bank & Trust of Syracuse v. Otoe Cty.*, 233 Neb. 412, 445 N.W.2d 880 (1989).

6. “Actual value, market value, and fair market value mean exactly the same thing.”  
*Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 ( 2002).
7. Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value. Neb. Rev. Stat. §77-131 (Reissue 2003).
8. All taxable real property, with the exception of qualified agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004).
9. Qualified agricultural land and horticultural land shall be valued for purposes of taxation at eighty percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2003).
10. Qualified agricultural land and horticultural land means 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 retained or protected for future agricultural or horticultural uses under a conservation easement as provided in the Conservation and Preservation Easements Act shall be defined as agricultural land or horticultural land. Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land. 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 (1) (Reissue 2003).

11. Agricultural or horticultural products include grain and feed crops; forages and sod crops; animal production, including breeding, feeding, or grazing of cattle, horses, swine, sheep, goats, bees, or poultry; and fruits, vegetables, flowers, seeds, grasses, trees, timber, and other horticultural crops. Neb. Rev. Stat. §77-1359 (2) (Reissue 2003).
12. No residential, commercial, industrial, or agricultural building or enclosed structure or the directly associated land or site of the building or enclosed structure shall be assessed as qualified agricultural or horticultural land. Neb. Rev. Stat. §77-1361 (2) (Reissue 2003).
13. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
14. The presumption that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
15. The presumption in favor of the county board may be classified as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions

governing taxation. *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987) (citations omitted)

16. The Commission can grant relief only if the Taxpayer establishes by clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005).
17. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).
18. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736, (2000).
19. A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447, (1999).
20. A corporate officer or other representative of an entity, must be shown to be familiar with the property in question and have a knowledge of values generally in the vicinity to be qualified to offer an opinion of value. *Kohl's Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb. App. 809, 638 N.W.2d, 881 (2002).

**III.  
DISCUSSION**

The subject property consists of 12 parcels. Eleven parcels are unimproved rural land and one parcel is improved agricultural land and horticultural land. The 12 parcels identified in the appeals can best be referenced through the use of lot numbers which were associated with them in a survey plat which appears at page 93 of Exhibit 13. The associations are as follows:

Case File No.	Area	Survey Plat Lot Number
05A-091	11.47 A	Lot 1
05A-092	11.11 A	Lot 2
05A-093	10.56 A	Lot 3
05A-094	10.83 A	Lot 4
05A-095	10.43 A	Lot 5
05A-096	13.43 A	Lot 6
05A-097	10.24 A	Lot 7
05A-098	10.25 A	Lot 8
05A-099	10.12 A	Lot 10
05A-100	31.29 A	Lot 11 plus 20 acres
05A-101	10.16 A	Lot 14
05A-102	11.75 A	Lot 15.

The Taxpayer contends that all twelve parcels identified and individually assessed by the Assessor should be assessed as one parcel. The Taxpayer further asserted that there would be a reduction in value for lots 1, 11, and 15 if they were assessed as part of one parcel with the other eight. (E1, E10, and E12). Parcel boundaries as proposed by the Taxpayer are shown at page 95 of Exhibit 13.

A parcel is defined as a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section. Neb. Rev. Stat. §77-132 (Supp. 2005 effective March 10, 2005). Assessors are required to complete the assessment roles and abstract of assessment as of March 19 of each year. Neb. Rev. Stat. §77-1514 (Cum. Supp. 2004). The

term “parcel” is also defined in the rules and regulations promulgated by the Property Tax Administrator as a whole section, half section, quarter section, or half quarter section of land under one ownership and general use. 350 Neb. Admin. Code ch 10 §001.21 (03/04). The statutory definition of parcel to the extent it differs from the definition contained in the rules and regulations of the Property Tax Administrator is deemed controlling. All twelve parcels as defined by the Assessor are contiguous, have the same ownership, and are in the same tax district and section. The required focus of the Commission is on the portion of the statutory definition specifying that a parcel is a "contiguous tract of land determined by its boundaries". The survey plat produced as page 84 of Exhibit 13 shows contiguous tracts of land and their boundaries. The Lots shown in that survey are subject to covenants, conditions, and restrictions, which benefit the owners of those lots and others. (E13:90). The public has been granted a perpetual non-exclusive easement or right-of-way along and through all of the roads described in the survey. (E13:92). Lot 13 as identified in the survey was sold prior to the assessment date. The valuation of Lots 9 and 12 shown in the survey plat were not appealed although they are in the W½ of Section 29, Township 13 North Range 30 West.

The Commission is unable to grant relief for several reasons. First, valuation of all land that the Taxpayer would include in the parcel he wishes to have valued as a whole is not before the Commission. Assessment of lots 9 and 12 as shown in the survey plat at page 84 of Exhibit 14 were not appealed although they are within the area shown in the survey plat shown at page 95 of Exhibit 13. The Commission cannot grant relief by altering the value of land without an appeal of that lands value.

Second, actions of the Taxpayer do not support its contention that the survey plat shown at page 84 of Exhibit 13 should not define parcels for assessment purposes. The Taxpayer's President testified that the survey plat had multiple purposes including the sale of 3 lots as defined in the survey plat to an adjoining land owner. In addition, the Taxpayer's President testified that the delineated tracts were all over ten acres in size in order to avoid county restrictions, and to maximize value, although the surveyed tract could be bought as a whole, if that maximized value.

Third, the survey plat shown at page 95 of Exhibit 13 recites as its purpose "for Assessor's office to REMOVE proposed tract lines for taxation purposes from survey #9323 dated 5/1/04 (survey #9231 was filed for purposes of protective covenants only - not as lot splits)". (E13:95). No one explained why the survey plat had to be prepared for purposes of the protective covenants. The covenants could have attached to a legal description without regard to the lots as defined in the survey plat. Further if the purpose was to leave the survey lines in place for purposes of sales which could maximize the value of the land, a suggestion that they be disregarded for taxation purposes is contrary to the principle that land be assessed at its highest and best use. In this case the highest and best use indicated is as rural residential parcels. Filing of the plat whether intended or not benefitted the Taxpayer and could not be ignored the Assessor and County Board.

Finally, clear and convincing evidence of taxable value was not offered with which to determine taxable value of the tract identified by the Taxpayer as the proper parcel for assessment purposes.

**V.  
ORDER**

**IT IS THEREFORE ORDERED THAT:**

1. The decisions of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2005, are affirmed.
2. Taxable value of each parcel of the subject property for the tax year 2005 is:

Case No.05A-091

Land value	\$17,205.00
Total value	<u>\$17,205.00</u>

Case No.05A-092

Land value	\$3,835.00
Total value	<u>\$3,835.00</u>

Case No.05A-093

Land value	\$3,645.00
Total value	<u>\$3,645.00</u>

Case No.05A-094

Land value	\$3,765.00
Total value	<u>\$3,765.00</u>

Case No.05A-095

Land value	\$3,600.00
Total value	<u>\$3,600.00</u>



Case No.05A-096

Land value	\$4,635.00
Total value	<u>\$4,635.00</u>

Case No.05A-097

Land value	\$3,535.00
Total value	<u>\$3,535.00</u>

Case No.05A-098

Land value	\$3,535.00
Total value	<u>\$3,535.00</u>

Case No.05A-099

Land value	\$3,490.00
Total value	<u>\$3,490.00</u>

Case No.05A-100

Land value	\$37,740.00
Improvements	\$41,010.00
Total value	<u>\$78,750.00</u>

Case No.05A-101

Land value	\$3,505.00
Total value	<u>\$3,505.00</u>

Case No.05A-102

Land value	\$35,350.00
Total value	<u>\$35,250.00.</u>

3. This decision, if no appeal is timely filed, shall be certified to the Lincoln County Treasurer, and the Lincoln County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Supp. 2005).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2005.
7. This order is effective for purposes of appeal July 21, 2006.

**Signed and Sealed.** July 21, 2006.

---

Wm. R. Wickersham, Commissioner

---

Susan S. Lore, Commissioner

---

William C. Warnes, Commissioner

**SEAL**

**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 PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW CONTAINED IN NEB. REV. STAT. §77-5019 (SUPP. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.**