

**NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

RICHARD, KAREL & EUGENE)	
ZNAMENACEK,)	
)	CASE NO 05A-233,
Appellant,)	
)	DECISION AND ORDER AFFIRMING
v.)	THE DECISION OF THE SALINE
)	COUNTY BOARD OF EQUALIZATION
SALINE COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Richard, Karel & Eugene Znamenacek to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on June 6, 2006, pursuant to a Notices and Orders for Hearing issued November 15, 2005, and March 27, 2006. Commissioners Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Richard, Karel & Eugene Znamenacek, ("the Taxpayer") were present at the hearing without legal counsel.

The Saline County Board of Equalization ("the County Board") appeared through legal counsel, Tad D. Eickman, County Attorney for Saline 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 this case is as follows.

**I.
FINDINGS**

The Commission finds and determines that:

1. The Taxpayers are the owner of record of certain real property described as S½NE¼, Section 19, Township 7, Range 4, Saline County, Nebraska, ("the subject property").
2. Taxable value of the subject property placed on the assessment roll as of January 1, 2005, ("the assessment date") by the Saline County Assessor, value as proposed by the Taxpayers in a timely protest, and taxable value as determined by the County Board is shown in the following table:

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Description: S½NE¼, Section 19, Township 7, Range 4, Saline County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$88,815.00	\$69,274.00	\$88,815.00
Total	\$88,815.00	\$69,274.00	\$88,815.00

3. The Taxpayers timely filed an appeal of the County Board's decision to the Commission.
4. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
5. An Order for Hearing and Notice of Hearing issued on March 27, 2006, set a hearing of the Taxpayer's appeal for June 6, 2006, at 9:00 a.m. CDST.
6. 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.

7. For reasons stated below, the Taxpayer has not adduced sufficient, clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary, and the decision of the County Board should be affirmed.
8. Taxable value of the subject property for the tax year 2005 is:

Agricultural land	\$88,815.00
Total	<u> \$88,815.00.</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. The Taxpayer must establish by clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005) *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 621 N.W.2d, 523, (2001).
14. "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).

15. 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).
16. 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).
17. "An owner who is familiar with his property and knows its worth is permitted to testify as to its value." *U. S. Ecology v. Boyd County Bd. Of Equalization*, 256 Neb. 7, 16, 588 N.W.2d 575, 581, (1999).

III. DISCUSSION

The subject property is unimproved agricultural and horticultural land. 50.79 acres of the parcel are used as dry crop land, 28 acres are used as grassland, and 1 acre is dedicated to use as a road. (E20:58). The subject property is owned by three brothers. Two brothers testified at the hearing and gave differing opinions of actual value as of the assessment date. One of the opinions was based on a 4.3% increase to taxable value determined by the assessor for the prior year. The other opinion was based on general knowledge of the real estate market in Saline County. The assessor had provided the Taxpayer with information concerning the County's valuation process. The Assessor also furnished a list with information concerning sales of various agricultural land and horticultural land parcels. (E7:2). From that list the County Appraiser has extracted sales of property deemed to be the most comparable to the subject property. (E20:64). The Taxpayers testified concerning factors which affect comparability of

the parcels identified by the Appraiser. A Taxpayer testified that the use of soil types to classify agricultural land and horticultural land did not result in proper classification of the subject property because slope and other characteristics were not properly accounted for. An Appraiser for the County testified that the soil survey did take slope into account. The soil survey for Saline County was issued in 1990. United States Department of Agriculture, *Soil Survey of Saline County Nebraska*, p iii (1990). The criteria for classification of soils contained for the survey includes slope. United States Department of Agriculture, *Soil Survey of Saline County Nebraska*, pp 85-100, (1990). The Commission is unable to determine from the evidence presented that the soil classifications as determined by the United States Department of Agriculture are not appropriate. The Commission is also unable to determine from the evidence presented that the soil classifications, as determined by the United States Department of Agriculture, were not used appropriately as a part of the methodology used to determine taxable value of the subject property.

Soil classifications as determined by the United States Department of Agriculture were converted into by the Assessor into capability units. (E20). The capability unit designations appear in the property record files of the Assessor with assigned per acre values. (E20:58). The procedures utilized by the Assessor are prescribed by rules and regulations of the Property Tax Administrator. 350 Neb. Admin. Code, ch 14, §004.08 (03/04).

A Taxpayer testified that the County Assessor had not fully explained the techniques used to determine the value per acre for the various classifications shown in Exhibit 20 at page 18. A spreadsheet had been provided by the County Assessor to the Taxpayer concerning dry crop land in Market Area 3. (E10). The spreadsheet shows a breakdown of sales by

classifications with values assigned for each classifications. The resulting values are compared to the sale price. (E10:7 and 8). The result is both a disaggregation and an aggregation to establish values for the various constituent classifications and then a test of the validity of values assigned to various classifications by calculation of an assessment to sale ratio. The test was accomplished by calculation of an assessment to sale ratio based on the proposed assessed value derived from use of the values assigned to each classification of property in a parcel. The assessment to sale ratios obtained in the exercise produced ratios indicating that the values assigned met standards for assessment of agricultural land and horticultural land. The values for each classification in the spreadsheet are those shown in Exhibit 20 at page 18. The values for each classification of property were then used to value parcels in Market Area 3. While the spread sheet does not detail the full basis for judgements made, it does reflect the judgements which were made and shows a test of those judgements against an objective standard. The spreadsheet presentation supports the decision of the County Board.

A Taxpayer testified that the subject property should be valued on its income producing capacity and not based on its value for uses other than agricultural or horticultural uses. No evidence was presented concerning the income producing capacity of the subject property.

The Taxpayer argued that the percentage increase in taxable or assessed value for the tax year 2005 exhibited too large an increase over the taxable or assessed value determined for the prior year. Courts in Nebraska have long recognized that a prior year's taxable valuation is not relevant to a determination of taxable value in a subsequent year. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). That determination recognizes that the taxable value in the prior year may have been erroneous and that the statutes governing determination of taxable

value require an annual review. *Affiliated Foods Coop v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201,206 (1988). Because a prior year's taxable valuation is not relevant to a determination of taxable value in a subsequent year, any calculation based on a prior year's taxable value is likewise not relevant.

The County also produced a comparable sales analysis for the subject property. (E20:35). The comparable sales analysis supports the determination of the County Board.

A Taxpayer to prevail must do more than criticize taxable value as determined by the County Board. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

The Commission is unable to find that the determination of the County Board was unreasonable or arbitrary

**V.
ORDER**

IT IS THEREFORE ORDERED THAT:

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

Agricultural land	\$88,815.00
Total	\$88,815.00.
3. This decision, if no appeal is timely filed, shall be certified to the Saline County Treasurer, and the Saline 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 7, 2006.

Signed and Sealed. July 7, 2006.

Wm. R. Wickersham, Commissioner

Susan S. Lore, Commissioner

Robert L. Hans, 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.