

**NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

WILLIS D. HUNT,)	
)	
Appellant,)	CASE NOs 05A-047, 05A-048, 05A-049
)	& 05A-050
v.)	
)	DECISION AND ORDER AFFIRMING
FURNAS COUNTY BOARD OF)	THE DECISION OF THE FURNAS
EQUALIZATION,)	COUNTY BOARD OF EQUALIZATION
)	
Appellee.)	
)	

The above-captioned cases were called for a hearing on the merits of appeals by Willis D. Hunt 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 29, 2006, pursuant to a Notice and Order for Hearing issued March 8, 2006. Commissioners Wickersham, Warnes, and Lore were present. Commissioner Wickersham presided at the hearing.

Willis D. Hunt, ("the Taxpayer") was present at the hearing without legal counsel.

The Furnas County Board of Equalization ("the County Board") appeared through legal counsel, Thomas P. Patterson, County Attorney for Furnas 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 tables ("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 Furnas 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-047

Description: SE¹/₄ Section 13, Township 3 N, Range 22 W, Furnas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$62,885.00	\$58,935.00	\$62,885.00
Total	\$62,885.00	\$58,935.00	\$62,885.00

Case No. 05A-048

Description: NW¹/₄, N¹/₂SW¹/₄, SW¹/₄NE¹/₄, NW¹/₄SW¹/₄, Section 11, Township 1 N, Range 23 W, Furnas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$111,995.00	\$104,120.00	\$111,995.00
Total	\$111,995.00	\$104,120.00	\$111,995.00

Case No. 05A-049

Description: NE¼, E½NW ¼ Section 8, Township 2 N, Range 23 W, Furnas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$88,470.00	\$83,195.00	\$88,470.00
Total	\$88,470.00	\$83,195.00	\$88,470.00

Case No. 05A-050

Description: NE¼, Section 26, Township 3 N, Range 24 W, Furnas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$54,505.00	\$50,630.00	\$54,505.00
Total	\$54,505.00	\$50,630.00	\$54,505.00

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 8, 2006, set a hearing of the Taxpayer's appeals for June 29, 2006, at 12:00 p.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-047

Agricultural land \$62,885.00
Total \$62,885.00

Case No. 05A-048

Agricultural land \$111,995.00
Total \$111,995.00

Case No. 05A-049

Agricultural land \$88,470.00
Total \$88,470.00

Case No. 05A-050

Agricultural land \$55,630.00
Total \$55,630.00.

**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. “Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.” *Neb. Cons.*, art. VIII, §1

14. Equalization requires a comparison of the ratio of assessed to actual value for the subject property and comparable property. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).
15. Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value. *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).
16. The constitutional requirement of uniformity in taxation extends to both rate and valuation. *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).
17. 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).
18. 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).
19. 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)
20. 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).
 21. "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).
 22. 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).
 23. 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).
 24. "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).
 25. The prior year's assessment is not relevant to the subsequent year's valuation. *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).

III. DISCUSSION

The parcels comprising the subject property are four unimproved tracts of agricultural land and horticultural lands. The parcels are primarily composed of dry crop land and grassland.

The County Assessor testified that the taxable value assigned by her to all classifications of agricultural land and horticultural land in Furnas County, except waste land, were increased by \$25.00 per acre for tax year 2005. The County Assessor further testified that the decision to increase values in that fashion was made after an analysis of sales of unimproved agricultural and horticultural lands. The sales analyzed are shown in Exhibit 8. The County Assessor analyzed the sales and made a decision concerning possible value adjustments utilizing a spreadsheet. An example of the spreadsheet is shown in Exhibit 9.

The Taxpayer contends that the decision made by the County Assessor was not correct because the result was a greater percentage increase for classification with lower initial values than classes with higher initial values i.e. irrigated vs dry crop land or dry crop land vs grass land. An additional concern to the Taxpayer is the larger proportionate share of that total represented by the aggregate value of the land classifications with lower values. A statistical measure is used by assessing officials to determine whether high or low dollar value properties are being valued disproportionately. The statistical measure referred to is the price related differential (PRD). If the PRD is over 1.00 the indication is that higher value properties are under assessed. Robert J. Gloudemans, Mass Appraisal of Real Property, International Association of Assessing Officers, 240, (1999). The PRD was 103.74 when calculated based sales of unimproved agricultural land and horticultural land in Furnas County, as shown in the

Reports and Opinions of the Property Tax Administrator for the year 2005 at page 77. A PRD of 103.74 indicates that higher valued property are under assessed after the adjustments made by the County Assessor.

To obtain relief it is necessary however to do more than criticize the results obtained by the County Assessor. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983). The Taxpayer testified that he believed the taxable value of the subject property should not have been changed from the prior year's determination. The County Assessor testified that change to at least some values assigned to agricultural land and horticultural land classifications was necessary to meet assessment standards imposed by law. The Taxpayer asserted that any changes should have been made on the basis of percentage changes to prior values. Specific percentage changes were not proposed by the Taxpayer. The Commission is unable to determine the changes by percentage to some or all agricultural land and horticultural land classifications that would be necessary to meet assessment standards for the tax year 2005. Because the Commission cannot determine appropriate changes to the valuation of agricultural land and horticultural land classifications in Furnas County for the tax year 2005 it is unable to order any change to taxable values as determined by the County Board.

**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-047

Agricultural land \$62,885.00

Total \$62,885.00

Case No. 05A-048

Agricultural land \$111,995.00

Total \$111,995.00

Case No. 05A-049

Agricultural land \$88,470.00

Total \$88,470.00

Case No. 05A-050

Agricultural land \$55,630.00

Total \$55,630.00.

3. This decision, if no appeal is timely filed, shall be certified to the Furnas County Treasurer, and the Furnas 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 3, 2006.

Signed and Sealed. July 3, 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.