

**NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

RICHARD W. ALLEN,)	
)	
Appellant,)	CASE NOs 05A-058, 05A-059
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE DOUGLAS
DOUGLAS COUNTY BOARD OF)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	
)	

The above-captioned cases were called for a hearing on the merits of appeals by Richard W. Allen 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 May 22, 2006, pursuant to a Notice and Order for Hearing issued February 14, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Richard W. Allen, ("the Taxpayer") was present at the hearing with Frances Manker Bertsch and J. Patrick Ryan as legal counsel.

The Douglas County Board of Equalization ("the County Board") appeared through legal counsel, James A. Thibodeau, a Deputy County Attorney for Douglas 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 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 Douglas 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-058

Description: Part of Section 31 EX E 297 S 330 N825 FT & S 50 N 495 E 30 FT - TX LT 1 NE¼NW¼ 22.3 acres, Township 16, Range 10, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$111,500.00	\$52,320.00	\$111,500.00
Total	\$111,500.00	\$52,320.00	\$111,500.00

Case No. 05A-059

Description: Part of Section 31 -EX IRREG 140 X 125 FT IN SE COR & IRREG .68 AC IN SW COR-IRREG E 326.19 FT TX LT 2 N OF HWY 275 NWNW 3.43 acres, Township 16, Range 10, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$17,200.00	\$10,700.00	\$17,200.00
Improvements	\$13,500.00	\$10,000.00	\$13,500.00
Total	\$30,700.00	\$20,700.00	\$30,700.00

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 February 14, 2006, set a hearing of the Taxpayer's appeals for May 22, 2006, at 1:00 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-058

Land	\$111,500.00
Total	<u>\$111,500.00.</u>

Case No 05A-059

Land	\$17,200.00
Improvements	\$13,500.00
Total	<u><u>\$30,700.00.</u></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. 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. 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).
12. "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).

13. 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).
14. 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).
15. "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 consists of two parcels. The smaller parcel 3.43 acres in extent is improved with two pole barns. The barns have metal siding and roofs, concrete floors, electrical service and overhead doors. One of the barns is 25 X 60 feet and was built in 1991. The other barn is 32 X 75 feet and was built in 1974. Both barns are used by the Taxpayer. Both parcels are zoned for residential use, are inside the municipal limits of Valley, are in a flood plain and are used for the production of crops without irrigation. The Taxpayer objected to the use of three comparable properties submitted by the County. The three properties are adjacent to an interchange for Highway 275 and are zoned for commercial use. The Taxpayer testified that both parcels had water problems if it rained more than two inches and that the problems were most severe on the larger tract sometimes drowning crops on five to ten acres of that land. The

Taxpayer testified that the agricultural land in both parcels had an actual value of \$3,750.00 per acre and should be assessed at \$3,000.00 per acre.

The Taxpayer testified that one comparable offered by the County, Comp 3 as shown in Exhibit 2 at page 13, was a sale of dry crop land. The Taxpayer testified that the parcel was flat and better than the subject property. The parcel sold on January 23, 2002, for \$51,000.00 or \$5,247 per acre. (E1:12). The subject property has an assessed value of \$5,000.00 per acre. (E1:10 and E2:10). Its indicated actual value is \$6,250.00 per acre ($\$5000.00 \div .8 = \$6,250.00$).

While the subject property is used for agricultural purposes it is also zoned for residential use and is within the municipal limits of Valley. Both of these factors would contribute to value. The subject parcel is not eligible for special value and is not entitled to be valued solely on its agricultural use. Neb. Rev. Stat. 77-1344 (Supp. 2005).

The Taxpayer testified concerning a sale of irrigated crop land. The property record file for that property was not furnished to the Commission as required by the order for hearing and it is not possible to determine whether that was an arms length transaction or whether it is comparable in any respect to the subject property.

The Income Approach can be defined as “a set of procedures through which an appraiser derives a value indication for an income-producing property by converting its anticipated benefits (cash flows and reversion) into property value. *The Dictionary of Real Estate Appraisal*, Fourth Edition, Appraisal Institute, p.143, (2002). The steps required for use of the income approach with direct capitalization may be summarized as (1) estimate potential gross income; (2) deduct estimated vacancy and collection loss to determine effective gross income; (3) deduct estimated expenses to determine net operating income; (4) divide net operating income by an

estimated capitalization rate to yield indicated value. *The Appraisal of Real Estate* 12th Edition, The Appraisal Institute, 2001, pp. 493 - 494. Testimony was received concerning one year of income and expenses associated with each tract. Even if other difficulties with use of the income approach could be resolved, no testimony was given concerning a capitalization rate that could have been applied to complete application of the income approach.

The Taxpayer testified that in his opinion the improvements on the smaller parcel had an actual value of \$10,000.00. No other evidence was offered in support of that opinion.

The Commission is unable to conclude that the determinations of the County Board were either unreasonable or arbitrary.

**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-058

Land	\$111,500.00
Total	<u>\$111,500.00.</u>

Case No 05A-059

Land	\$17,200.00
Improvements	\$13,500.00
Total	<u><u>\$30,700.00.</u></u>

3. This decision, if no appeal is timely filed, shall be certified to the Douglas County Treasurer, and the Douglas 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 June 1, 2006.

Signed and Sealed. June 1, 2006.

Wm. R. Wickersham, Commissioner

Susan S. Lore, Commissioner

Robert L. Hans, 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.