

**NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

WILLIAM C. TIMMONS,)	
)	
Appellant,)	CASE NO 05R-265
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE LINCOLN
LINCOLN COUNTY BOARD OF)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	
)	

The above-captioned case was called for a hearing on the merits of an appeal by William C. Timmons 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 26, 2006, pursuant to a Notice and Order for Hearing issued March 7, 2006. Commissioners Wickersham, Warnes, and Lore were present. Commissioner Warnes presided at the hearing.

William C. Timmons, ("the Taxpayer") was present at the hearing without legal counsel.

The Lincoln County Board of Equalization ("the County Board") appeared through legal counsel, Joe W. Wright, 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 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 PT. SW 1/4 13-15-31 lying southwesterly of the Southwesterly State of Nebraska Highway 97 Right of Way, Lincoln 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 Lincoln County Assessor, the value as proposed by the Taxpayer in a timely protest, and taxable value as determined by the County Board is shown in the following table:

Case No. 05R-265

Description: PT. SW 1/4 13-15-31 lying southwesterly of the Southwesterly State of Nebraska Highway 97 Right of Way, Lincoln County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$17,825.00	\$7,800.00	\$17,825.00
Improvement	\$-0-	\$-0-	\$-0-
Total	\$17,825.00	\$7,800.00	\$17,825.00

3. The Taxpayer 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 7, 2006, set a hearing of the Taxpayer's appeal for June 26, 2006, at 4:00 p.m.

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:

Land value	\$17,825.00
Improvement value	\$ <u>-0-</u>
Total value	<u>\$17,825.00.</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. 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).

10. "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).
11. 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).
12. 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).
13. "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 critical issue to be decided in this appeal is the valuation of the subject property on January 1, 2005.

The subject property is 19.63 acres of unimproved land. The land had been bought by Appellant for \$5,889.00 in September, 2004, which equals \$300.00 per acre. The subject property was split off of a larger tract of property owned by Tom Hansen doing business as the Hansen Ranch Company. The Lincoln County Board of Equalization ordered a valuation of the subject property of \$17,825.00 for the year 2005 which equals \$908.00 per acre.

Prior to the purchase of the subject property by Appellant, it had been used by the previous owner for the grazing and pasturing of livestock. At the time of its sale to Appellant the subject property was classified as agricultural land and assessed accordingly at \$195 per acre. Upon the sale of the subject property to Appellant the land was reclassified as rural residential and for 2005 its valuation was increased to \$908.00 per acre. Appellant testified he and his wife were intending to retire to the subject property and make it their home site. The Appellant testified that he signed for a Land Use Permit which recited that the property use would change to rural residential.

One of the concerns expressed by Appellant was his lack of understanding why the subject property was removed from its agricultural classification and what criteria was used by the Lincoln County Assessor to reclassify the subject property.

Testimony by Lincoln County appraiser Henry Kirk Vogt indicated that the County used 60 acres in size as a criteria for classifying agricultural land. This testimony confirmed the statements made to Appellant earlier by someone in the Lincoln County's assessor's office that there was some sort of size criteria for agriculture; however, followup testimony revealed that the size of the property was not a critical condition for classifying land as agricultural in nature. This revelation came from Bill Thornburgh, lead appraiser for the Lincoln County Assessor's office. His testimony was that property could qualify for agricultural use regardless of its size.

With this confusion removed, the Commission's attention turns to why the property affected by this appeal was classified as rural residential. The answer lies in the theory of

highest and best use. This is a term that means that property will be valued for the highest use for which it is suited for. The definition for this term is found in the Dictionary of Real Estate Appraisal, 3rd Ed., Appraisal Institute, 1998, p.171. The term means “The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially reasonable, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical probability, financial feasibility, and maximum profitability.” Testimony by Mr. Vogt revealed that the County believed that the highest and best use of the subject property was as rural residential. This reclassification was made in the face of the reality that the Appellant continued to use the land for pasturing of livestock, the animals now being his horses. The Commission finds that the classification of the subject property as rural residential was reasonable and not arbitrary.

The Appellant testified that he and his wife raise horses on the subject property, but this is not their sole source of income. It was Appellant's belief that many ranchers and farmers do not rely on production from their land as their sole means of support.

Another item of concern to Appellant was knowing how the county calculated the valuation for 2005. How the County figured its valuation of the subject property for 2005 can be found on E15:6. The subject property is in Market Area 9 and all property within this area has a base value per acre of \$4,000.00. Thus, the number of acres of the subject property, 19.63, is multiplied by \$4,000.00/acre and then this figure is adjusted for size in accordance with the chart on E15:51. From the chart it is seen that the adjustment is .227. Thus the calculation to

determine valuation of the subject property for 2005 is 19.63 acres x \$4,000.00/acre x .227 = \$17,825.00.

The size adjustment figure is from a chart which has been developed over time by the Lincoln County Assessor and other sources. The market areas have been drawn to reflect the market conditions based on sales over many years of observation.

Appellant testified that the purchase contract for the subject property contained several clauses and conditions that should reduce the valuation of the property. In the Purchase Agreement, E3, there exists a prohibition of subdividing the property, E3:2, Section 4.1. Also, at section 11.9, E3:5, an easement is retained by Sellers which allows access by Sellers to their property adjacent to the subject property. Lastly, at Section 10, E3:3, the Seller received a Right of First Refusal. The Commission finds that while these conditions are noteworthy, they do not reduce the valuation of the subject property. See, *Firethorn Invest. v. Lancaster Cty Bd. Of Equal.*, 261 Neb 231, 622 N.W.2d. 605 (2001).

Appellant objected to the County's use of its comparables in its appraisal report, E15:6 which valued the subject property using the Market or Sales Comparison method of valuation. He felt that the comparables were closer to town, had access by a blacktop road and some were in a subdivision. The commission finds after review of these comparables, in conjunction with the testimony received from the County, that the comparables are reasonable and not arbitrary. Testimony revealed that there were no comparable sales in the same market area as the subject

property, Market Area 9, and it was necessary to go to Market area 8 to find sales of comparable properties.

The comparables provided by the Appellant, E6 to 10, were all over 130 acres in size and were used solely for agricultural purposes. The Commission finds that the comparables offered by Appellant are not reasonable despite their proximity to the subject property.

Lastly, testimony was received regarding whether the sale of the subject property to Appellants was an arm’s length transaction. In this regard , the Commission finds that the sale was not a qualified sale due to the property not being advertised to the public for sale.

It is for each of the above reasons that the Commission finds that the Appellant has not met its burden to show that the order of the Lincoln County Board of Equalization was not reasonable or that it was arbitrary in its decision.

**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:

Land value	\$17,825.00
Improvement value	\$ <u> -0-</u>
Total value	<u>\$17,825.00.</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 June 28, 2006.

Signed and Sealed. June 28, 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.