

**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

CURTIS L. ABENDROTH,)	
)	
Appellant,)	CASE NO. 05A-065
)	
vs.)	FINDINGS AND ORDER
)	AFFIRMING THE DECISION OF THE
CUMING COUNTY BOARD OF)	CUMING COUNTY BOARD OF
EQUALIZATION,)	EQUALIZATION
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Curtis L. Abendroth 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 February 27, 2006, pursuant to a Notice and Order for Hearing issued December 15, 2005. Commissioners Wickersham, Warnes, and Hans were present. Commissioner Wickersham presided at the hearing.

Curtis L. Abendroth ("the Taxpayer") appeared at the hearing without counsel.

The Cuming County Board of Equalization ("the County Board") appeared through counsel, Thomas B. Donner, Esq., the County Attorney for Cuming 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. STANDARD OF REVIEW

The Taxpayer, in order to prevail, is required to demonstrate that the decision of the County Board was incorrect and arbitrary or unreasonable. Neb. Rev. Stat. §77-5016(8)(Supp. 2005). The presumption created by the statute can be overcome if the Taxpayer shows by clear and convincing evidence that the County Board either failed to faithfully perform its official duties or that the County Board failed to act upon sufficient competent evidence in making its decision. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). It is the Taxpayer's burden to overcome the presumption with clear and convincing evidence of more than a difference of opinion. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the value as determined by the County Board was unreasonable. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

II. FINDINGS

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described in the appeal as Tax Lots 4 and 5, Section 8, Township 24, Range 7, Cuming County, Nebraska ("the subject property").

- 2. Eighty percent of the actual or fair market value of the agricultural land and horticultural land for the subject property, placed on the assessment roll as of January 1, 2005, ("the assessment date") by the Cuming County Assessor was:

Land value	\$132,290.00
Total value	<u>\$132,290.00.</u>

- 3. The Taxpayer timely protested that value to the County Board. The Taxpayer proposed the following value for the subject property:

Land value	\$89,775.00
Total value	<u>\$89,775.00.</u>

- 4. The County Board denied the protest. (E:1)
- 5. The Taxpayer timely filed an appeal of that decision to the Commission.
- 6. The County Board was served with a Notice in Lieu of Summons, and duly answered that Notice.
- 7. An Order for Hearing and Notice of Hearing issued on December 15, 2005, set a hearing of the Taxpayer's appeal for February 27, 2006, at 1:00 p.m. CST.
- 8. 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.
- 9. The Taxpayer has not adduced sufficient, clear and convincing evidence to overcome the burden of proof in favor of the County Board.
- 10. Based on the entire record before it, the Commission finds and determines that eighty percent of the actual or fair market value of the agricultural land and horticultural land for the subject property for the tax year 2005 is:

Land value \$132,290.00

Total value \$132,290.00

11. The decision of the County Board was neither arbitrary nor unreasonable.
12. The decision of the County Board should be affirmed.

III. CONCLUSIONS OF LAW

1. Subject matter jurisdiction of the Commission 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 and the subject matter of this appeal.
3. The Commission, while making a decision, may not consider testimony, records, documents or other evidence which is not a part of the hearing record except those identified in the Commission's rules and regulations or Section 77-5016 (3). Neb. Rev. Stat. §77-5016 (3) (Supp 2005).
4. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004).
5. 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).
6. 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)

7. 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).
8. “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).
9. Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Neb. Rev. Stat. §77-112 (Reissue 2003).

10. “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).
11. 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).
12. 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).
13. The Taxpayer must adduce evidence establishing that the action of the County Board was incorrect and unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005). The Nebraska Supreme Court, in considering similar language, has held that “There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence on appeal to the contrary. From that point on, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.” *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523, (2001).

14. 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).
15. 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).
16. The Court has also held that "In an appeal to the county board of equalization or to [the Tax Equalization and Review Commission] and from the [Commission] to this court, the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment." *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523, (2001).
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. "It is the function of the county board of equalization to determine the actual value of locally assessed property for tax purposes. In carrying out this function, the county board must give effect to the constitutional requirement that taxes be levied uniformly and proportionately upon all taxable property in the county. Individual discrepancies and inequalities within the county must be corrected and equalized by the county board of

equalization.” *AT & T Information Systems, Inc. v. State Bd. of Equalization and Assessment*, 237 Neb. 591, 595, 467 N.W.2d 55, 58, (1991).

19. “It is well established that the value of the opinion of an expert witness is no stronger than the facts upon which it is based.” *Bottorf v. Clay County Bd. Of Equalization*, 7 Neb. App. 162, 167, 580 N.W.2d 561, 565, (1998).
20. “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).
21. The appraisal of real estate is not an exact science. *Matter of Bock’s Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874, (1977).

IV. DISCUSSION

The subject property is unimproved agricultural and horticultural land. The Taxpayer asserts that the actual value of the subject property is negatively impacted by drainage problems and the configuration of fields. The Taxpayer produced an appraisal of the subject property confirming his concerns. (E2). The Taxpayer’s Appraiser did not appear. The Taxpayer’s Appraiser relied exclusively on the sales comparison approach and produced five sales of comparable properties. (E2:20). The Taxpayer’s Appraiser made two adjustments to sales. (E2:20). The first adjustment relates to land use and productivity. (E2:21). The adjustment appears in the land row of a Sales Comparison Summary Grid. (E2:20). The use of four of the comparables is dry crop land and the fifth comparable is irrigated crop land. A County Appraiser testified that the soil classification system used by the county took soil productivity into account

and that further adjustment was not warranted. The soil classification system used by the county is derived from a soil survey. The classifications from the soil survey are shown in Exhibit 8. Soils are classified based on various characteristics. Once classified they are mapped and the number of acres of each soil classification in a parcel are determined and inventoried by the assessor's office. The property record file for the subject property and other property record files show those inventories. When properties are sold their sale price is analyzed against the inventory and values derived for each soil classification. The values derived from all available sales are then applied against the parcel inventory of a specific property and summed to produce a determination of value.

In addition to the soil classification, the soil survey assigns a capability unit to each soil type. (E8). The subject property has only two soils in its inventory, Kennebec (Ke) and Zook (Zo). (E9:1). Those soils have been assigned to capability units I and II respectively in the soil survey. (E8:2). The Taxpayer's Appraiser reduced the capability units to II and III respectively. (E2:4). That reduction should have affected the adjustments made in the land row of the Sales Comparison Summary Grid on page 20 of Exhibit 2. The Commission could find no justification for both adjustments. Credibility of the Taxpayer's appraisal was affected by those adjustments.

The Taxpayer's Appraiser had also made adjustments in the Other row of the Sales Comparison Summary Grid. (E2:20). Those adjustments are explained on page 22 of Exhibit 20. One of the adjustments is for wetness a factor taken into account in the soils classification system. Other adjustments are for difficulty or ease of farming. While adjustments for ease of farming may be appropriate, the adjustments for four sales are over 10% and require justification or explanation of the manner in which the amount of the adjustment was reached.

The Taxpayer's Appraiser as noted produced five comparables. The County Appraiser testified that a sale of property located within one mile of the subject property and whose characteristics are similar to the subject property was not included in the Taxpayer's Appraiser's comparables. The County Appraiser testified further that the property sold for a price substantially in excess of the sales produced by the Taxpayer's Appraiser. A property record file for the Comparable described by the County Appraiser was produced as Exhibit 12:7, 8, 9, and 10. Credibility of the Taxpayer's Appraisal was affected by the failure to analyze the sale found in Exhibit 12 at pages 7, 8, 9, and 10.

The Taxpayer has not produced clear and convincing evidence that taxable value as determined by the County Board was arbitrary or unreasonable.

**V.
ORDER**

IT IS THEREFORE ORDERED THAT:

1. The decision of the County Board determining eighty percent of the actual or fair market value of the agricultural land and horticultural land for the subject property as of the assessment date, January 1, 2005, as follows:

Land value	\$132,290.00
Total value	<u>\$132,290.00</u>

is affirmed.

2. This decision, if no appeal is timely filed, shall be certified to the Cuming County Treasurer, and the Cuming County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Supp. 2005).
3. Any request for relief, by any party, which is not specifically provided for by this order is denied.
4. Each party is to bear its own costs in this matter.
5. This decision shall only be applicable to tax year 2005.
6. This order is effective for purposes of appeal March 14, 2006.

Signed and Sealed. March 14, 2006.

Wm. R. Wickersham, 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.