

**NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

PAULINE A. DUNBAR, TRUSTEE,)	
PAULINE A. DUNBAR TRUST,)	
)	CASE NOs 05A-122, 05A-123
Appellant,)	
)	DECISION AND ORDER AFFIRMING
v.)	THE DECISION OF THE JOHNSON
)	COUNTY BOARD OF EQUALIZATION
JOHNSON COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned cases were called for a hearing on the merits of appeals by Pauline A. Dunbar, Trustee, Pauline A. Dunbar Trust 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 March 7, 2006, pursuant to a Notice and Order for Hearing issued November 15, 2005. Commissioners Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Pauline A. Dunbar, Trustee of Pauline A. Dunbar Trust, ("the Taxpayer"), was present at the hearing without legal counsel

The Johnson County Board of Equalization ("the County Board") appeared through legal counsel, Randall R. Ritnour, County Attorney for Johnson 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 appeals as shown in the following table ("the subject property").
2. Taxable value of each parcel of the subject property described in the appeals placed on the assessment roll as of January 1, 2005, ("the assessment date") by the Johnson County

Assessor, values as proposed by the Taxpayer in a timely protest and taxable value as determined by the County Board is shown in the following tables:

Case No. 05A-122

Description: S¹/₂SE¹/₄, NW¹/₄SW¹/₄SE¹/₄, and SW¹/₄NW¹/₄SE¹/₄, Section 11, Township 6 Range 9, Johnson County, Nebraska .

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$61,080.00	\$51,000.00	\$61,080.00
Total	\$61,080.00	\$51,000.00	\$61,080.00

Case No. 05A-123

Description: SE¹/₄ except 1.29 acres, Section 6, Township 6 Range 9, Johnson County, Nebraska

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$183,450.00	\$161,885.00	\$183,450.00
Total	\$183,450.00	\$161,885.00	\$183,450.00

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 Amended Order for Hearing and Notice of Hearing issued on November 15, 2005, set a hearing of the Taxpayer's appeals for March 7, 2006, at 1:00 p.m..
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. The Taxpayer has not adduced sufficient, clear and convincing evidence to overcome the burden of proof in favor of the County Board.
9. The decisions of the County Board were neither arbitrary nor unreasonable.
10. The decisions of the County Board should be affirmed.
11. Based on the entire record before it, the Commission finds and determines that taxable value of each parcel for the tax year 2005 is:

Case No 05A-122

Agricultural land	\$61,080.00
Total	<u>\$61,080.00</u>

Case No 05A-123

Agricultural land	\$183,450.00
Total	<u>\$183,450.00.</u>

**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. 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 agricultural or horticultural land. Neb. Rev. Stat. §77-1361 (2) (Reissue 2003).
9. “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).
10. 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).
11. “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).
12. 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).
13. 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).

14. “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
15. 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, 597 N.W.2d 623, 635 (1999).
16. 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).
17. 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).
18. “Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.” *Benyon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534, (1983).
19. 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).

20. 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).
21. 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).
22. 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).

23. "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).
24. "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).
25. "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).

IV. DISCUSSION

Both parcels of the subject property are unimproved agricultural and horticultural land. A witness for the Taxpayer testified that the County Assessor had advised that the taxable value of agricultural and horticultural land was determined as 75% of the median value shown by agricultural and horticultural land sales occurring within a three year period. Taxpayer produced Exhibit 26 showing that a taxable value of \$786.00 per acre can be derived using that methodology. At \$786.00 per acre the taxable value of the parcel in Case No 05A-122 would be \$47,160.00 (\$786.00 X 60 acres = \$47,160.00). The taxable value of the parcel in Case No

05A-123 would be \$124,746.06 ($\$786.00 \times 158.71 \text{ acres} = \$124,746.06$). The Taxpayer did not offer any other evidence of actual value or taxable value.

Exhibits 20 and 21 produced by the County Board show that the taxable value of the subject property was not determined as described. Exhibits 27 and 28 show that various values were assigned to lands within each parcel based on use and LVG codes. It is unknown whether or not the values utilized are 75% of actual or fair market value. The requirements of state law are clear however that the taxable value of agricultural and horticultural land is to be 80% of its actual value. Neb. Rev. Stat. 77-201 (Cum. Supp 2004). For review of compliance with that requirement State law does allow an established indicator of central tendency to fall within a range of seventy four to eighty percent for agricultural and horticultural lands. Neb Rev. Stat. 77-5023 (Cum Supp 2004). The indicator of central tendency used to measure compliance is the median. 442 Neb Admin Code, ch. 9, §002.03 (01/05). The level of value for agricultural and horticultural land as indicated by the median of sales assessment ratios derived from sales of agricultural and horticultural lands over a three year period in Johnson county ending 06/30/2004 was 75.53%. *2005 Reports and Opinions of the Property Tax Administrator for Johnson County*, p 40. That statistical measure is not applied to determine the taxable value of any parcel it is derived from the taxable value of sold parcels. The Taxpayer's assertion that the subject property should be valued at \$786 per acre seems to be based on a misunderstanding. A misunderstanding is not a sufficient basis for the Commission to grant relief.

The Taxpayer also asserted that the taxable value of the subject property should be equalized. In her protest the Taxpayer asserted that the subject property should be equalized with property adjoining or adjacent properties. (E1:1 and 2:1). Lack of equalization may be

shown through a comparison of the ratio of taxable value to actual value of the subject property and comparable properties. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999). The Taxpayer produced evidence of the taxable value of parcels that adjoin or are adjacent to the subject property. (E5,6,7,11,13, and 15). The Taxpayer did not produce evidence of the actual value of those parcels. It is not possible to determine whether the parcels for which taxable values were presented have taxable values which are equalized with the subject property.

The parcel described in Case No. 05A-123 is 158.71 acres in size. (E21:1). The County Assessor has classified 123.29 of those acres as dry, 17.66 acres as grass, 3.5 as road and 14.26 as waste. (E21:1). The Taxpayer produced evidence that there are only 113.8 acres considered tillable by the USDA Farm Service Agency (25.9 + 30.8 + 49.2 + 7.9). If that is correct the acres that could be classified as dry are 106.52 (113.8 - 7.28). The difference between that calculation and the County Assessor's inventory is 17.38 acres. Misclassification could affect a determination of value. In addition misclassification can result in a lack of equalization.

Benyon Farm Products Corporation v. Board of Equalization of Gosper County, 213 Neb. 815, 819, 331 N.W.2d 531, 534, (1983). The Commission is unable to grant relief in Case No. 05A-123 on the basis of misclassification however, because it is unable to determine from the evidence the proper classification of any lands that are misclassified.

**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-122

Agricultural land \$61,080.00

Total \$61,080.00

Case No 05A-123

Agricultural land \$183,450.00

Total \$183,450.00.

3. This decision, if no appeal is timely filed, shall be certified to the Johnson County Treasurer, and the Johnson 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 March 13, 2006.

Signed and Sealed. March 13, 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.