

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

| | | |
|------------------------|---|--------------------------------------|
| DARNALL RANCH INC., |) | |
| |) | |
| Appellant, |) | Case Nos 04A-55, 04A-56, 04A-57, and |
| |) | 04A-58 |
| v. |) | |
| |) | DECISION AND ORDER AFFIRMING |
| BANNER COUNTY BOARD OF |) | THE DECISIONS OF THE BANNER |
| EQUALIZATION, |) | COUNTY BOARD OF EQUALIZATION |
| |) | |
| Appellee. |) | |

The above-captioned cases were called for a hearing on the merits of appeals by Darnall Ranch Inc. ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Hampton Inn, Scottsbluff, Scotts Bluff County, Nebraska, on June 12, 2007. Commissioners Wickersham, Warnes, and Lore were present. Commissioner Wickersham presided at the hearing.

Gary Darnall, President of the Taxpayer was present at the hearing. Robert M. Brenner appeared as legal counsel for the Taxpayer.

James L. Zimmerman, County Attorney for Banner County, Nebraska, appeared as legal counsel for the Banner County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006) 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.
ISSUES

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2004, is less than taxable value as determined by the County Board. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining taxable value of the subject property was unreasonable or arbitrary; and

The taxable value of the subject property on January 1, 2004.

II.
FINDINGS OF FACT

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above captioned appeals to maintain them.
2. The parcels of real property to which the above captioned appeals pertain are described as All Section 21, Township 19, Range 53; All Section 22 Township 19 Range 53; All Section 32, Township 19, Range 53; and All Section 13, Township 19, Range 54 all in Banner County, Nebraska, ("the subject property").
3. Taxable value of each parcel of the subject property placed on the assessment roll as of January 1, 2004, ("the assessment date") by the Banner 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. 04A-55

Description: All Section 21, Township 19, Range 53, Banner County, Nebraska.

| | Assessor Notice Value | Taxpayer Protest Value | Board Determined Value |
|-------------------|-----------------------|---------------------------|------------------------|
| Agricultural Land | \$184,124.00 | \$188,865.00 | \$184,124.00 |
| Home Site | \$ 5,000.00 | \$Included in ag land | \$ 5,000.00 |
| Residence | \$101,492.00 | \$ 52,264.00 | \$101,492.00 |
| Outbuilding | \$ 1,064.00 | \$Included with residence | \$ 1,064.00 |
| Total | \$291,680.00 | \$241,129.00 | \$291,680.00 |

Case No. 04A-56

Description: All Section 22 Township 19 Range 53, Banner County, Nebraska.

| | Assessor Notice Value | Taxpayer Protest Value | Board Determined Value |
|-------------------|-----------------------|----------------------------|------------------------|
| Agricultural Land | \$189,511.00 | \$232,887.00 | \$189,511.00 |
| Feedlot | \$32,950.00 | \$Included in ag land | \$32,950.00 |
| Home Sites | \$6,700.00 | \$Included in ag land | \$6,700.00 |
| Residences | \$61,908.00 | \$Included in outbuildings | \$61,908.00 |
| Farm Site | \$4,350.00 | \$Included in ag land | \$4,350.00 |
| Outbuilding | \$127,752.00 | \$162,660.00 | \$127,752.00 |
| Total | \$423,171.00 | \$395,547.00 | \$423,171.00 |

Case No. 04A-57

Description: All Section 32 Township 19 Range 53, Banner County, Nebraska.

| | Assessor Notice Value | Taxpayer Protest Value | Board Determined Value |
|-------------------|-----------------------|----------------------------|------------------------|
| Agricultural Land | \$96,030.00 | \$106,080.00 | \$96,030.00 |
| Home Site | \$8,400.00 | \$Included in ag land | \$8,400.00 |
| Residences | \$179,658.00 | \$121,821.00 | \$179,658.00 |
| Farm Site | \$2,350.00 | \$Included in ag land | \$2,350.00 |
| Outbuilding | \$12,195.00 | \$included with residences | \$12,195.00 |
| Total | \$298,633.00 | \$227,901.00 | \$298,633.00 |

Case No. 04A-58

Description: All Section 13, Township 19 Range 54, Banner County, Nebraska.

| | Assessor Notice Value | Taxpayer Protest Value | Board Determined Value |
|-------------------|-----------------------|------------------------|------------------------|
| Agricultural Land | \$28,055.00 | \$32,901.00 | \$28,055.00 |
| Home Site | \$5,000.00 | \$Included in ag land | \$5,000.00 |
| Residence | \$71,893.00 | \$58,307.00 | \$71,893.00 |
| Total | \$104,948.00 | \$91,208.00 | \$104,948.00 |

4. Appeals of the County Board's decisions were filed with the Commission.
5. The County Board was served with Notices in Lieu of Summons and duly answered those Notices.
6. The appeals were consolidated for hearing by order of the Commission.
7. Taxable value of each parcel for the tax year 2004 is:

Case No 04A-55

| | |
|-------------------|---------------------|
| Agricultural land | \$184,124.00 |
| Home Site | \$ 5,000.00 |
| Residence | \$101,492.00 |
| Outbuildings | <u>\$ 1,064.00</u> |
| Total | <u>\$291,680.00</u> |

Case No 04A-56

| | |
|-------------------|---------------------|
| Agricultural land | \$189,511.00 |
| Feedlot | \$ 32,950.00 |
| Home Sites | \$ 6,700.00 |
| Residences | \$ 61,908.00 |
| Farm Site | \$ 4,350.00 |
| Outbuildings | <u>\$127,752.00</u> |
| Total | <u>\$423,171.00</u> |

Case No 04A-57

| | |
|-------------------|---------------------|
| Agricultural land | \$ 96,030.00 |
| Home Sites | \$ 8,400.00 |
| Residences | \$179,658.00 |
| Farm Site | \$ 2,350.00 |
| Outbuildings | <u>\$ 12,195.00</u> |
| Total | <u>\$298,633.00</u> |

Case No 04A-58

| | |
|-------------------|---------------------|
| Agricultural land | \$ 28,055.00 |
| Home Site | \$ 5,000.00 |
| Residence | <u>\$ 71,893.00</u> |
| Total | <u>\$104,948.00</u> |

**III.
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in each of the above captioned appeals is over issues raised during the county board of equalization proceedings on the appealed decision. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998).
2. “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).
3. 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).

4. 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).
5. “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).
6. 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).
7. 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. 2006).
8. 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) (Cum. Supp. 2006).
9. 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).

10. 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).
11. 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).
12. 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).
13. 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).

14. 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)
15. The Commission can grant relief only if there is clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See. Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2006). and e.g. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
16. "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).
17. 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).
18. 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).

19. A corporate officer or other representative of an entity, must be shown to be familiar with the property in question and have a knowledge of values generally in the vicinity to be qualified to offer an opinion of value. *Kohl's Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb.App. 809, 638 N.W.2d, 881 (2002).
20. The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998).
21. A Taxpayer, who only produced evidence that was aimed at discrediting valuation methods utilized by county assessor, failed to meet burden of proving that value of her property was not fairly and proportionately equalized or that valuation placed upon her property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).
22. Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981).

IV. ANALYSIS

The subject property consists of four parcels of agricultural land and horticultural land. All of the parcels are improved. The protests filed with the County Board raise issues concerning the contributions to value of land used for shelter belts, depreciation due to age,

and “locational” depreciation. (E18:5, E20:3, E22:3, and E24:6). The Taxpayer also argues that “equalization” was raised as an issue before the County Board. The only evidence that the equalized taxable value of the subject property was raised before the County Board is the testimony of an officer of the Taxpayer who testified that a statement “similar” to the statement attached to each appeal was read at the County Board protest hearing. Even though Exhibit 7 is incomplete it appears to be the only record of proceedings before the County Board. Nothing in Exhibit 7 as presented to the Commission indicates that equalization was raised as an issue before the County Board. The Taxpayer wishes the Commission to conclude that because Exhibit 7 is incomplete it should be supplemented by the testimony of the Taxpayer’s officer that a statement “similar” to the statement attached to each appeal was read at the County Board proceeding. Subject matter jurisdiction may not be presumed. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 583 N.W.2d 353 (1998). Any party wishing to supplement an incomplete record must offer more than a bare assertion that something “similar” to a document was read at or during a meeting as proof that an issue was raised in prior proceedings.

The Taxpayer argues that the decisions of the County Board were unreasonable and arbitrary because prior to 2003 the County’s assessment practices were unacceptable as shown by an audit. The evidence is that whatever the assessment practices were prior to 2003 that those practices were modified. On the record before the Commission it cannot determine that discontinued assessment practices for years prior to 2003 affected valuation of the subject property for the tax year 2004 and are not a basis for determining that the County Board’s decisions were unreasonable or arbitrary.

The Taxpayer next argues that a 2003 reappraisal of all improvements was not conducted properly and that any decisions based on the data gathered during that reappraisal are arbitrary or unreasonable. All parcels of the subject property are improved with residences and site improvements. (E36, E38, E40, and E42). All residences and other improvements were to be reappraised pursuant to the 2003 reappraisal contract. (E54). The Taxpayer cannot now selectively assert that the 2003 reappraisal was not properly conducted based on objections to the contributions to value determined for 6 residences on 4 parcels when other substantial improvements on the same 4 parcels were also reappraised in 2003.

The Taxpayer contends that the condition and/or quality of the residences was not properly determined. Condition refers to the physical state after construction of an improvement and requires an evaluation of items in need of immediate repair, those items that may be repaired or replaced at a later time and those items that will last the full economic life of the improvement. *The Appraisal of Real Estate*, 12th Edition, Appraisal Institute, 2001, pg. 265. In the context of a building's description, quality refers to the character of construction and the materials used in the original work. *Appraising Residential Properties*, 3rd Edition, Appraisal Institute, 1999, pg.119. An officer of the Taxpayer gave an opinion of those factors for each residence. The Taxpayer's officer did not relate his opinions of condition or quality to any criteria or standards or observations of other improvements. An officer for the Taxpayer also testified that at least two of the residences qualified for "locational" depreciation. "Locational" obsolescence is caused by changes external to property such as neighborhood changes, environmental or use changes, legislation, etc. 350 Neb. Admin Code ch 50 §001.04 (03/04). Economic depreciation is the loss in value as a result of an impairment in utility and

desirability caused by factors external to the property (outside the property's boundaries) *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, pp. 155. The Commission understands that the Taxpayers' "locational" depreciation is equivalent to economic depreciation. "Locational" depreciation is a factor to be considered in the valuation of a residence near a feedlot. *Livingston v. Jefferson County Board of Equalization*, 10 Neb.App. 934, 640 N.W.2d 426 (2002). In *Livingston* however, an appraisal which quantified the "locational" depreciation deduction was offered by the appellant. In this case no evidence of value based on specific sales was produced nor was an appraisal offered. A corporate officer may be competent to offer an opinion of value. *Kohl's Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb.App. 809, 638 N.W.2d, 881 (2002). The weight to be given the opinion is reserved to the trier of fact. An unsupported and unexplained opinion is insufficient to meet the Taxpayer's burden.

An appraiser also testified for the Taxpayer. The Taxpayer's appraiser offered opinions concerning the quality or condition of several residences on the subject property. The appraiser did not offer any opinion concerning the contribution to value of any residence on a parcel of the subject property, the amount of reduction in value that should be applied to value as determined by the County Board based on her observations, or the actual value of a parcel of the subject property. The Commission is left then with no evidence of the impact a change in quality or condition as suggested by the appraiser for the Taxpayer. The Commission will not speculate.

The County Assessor testified that after an inspection her opinion of the contribution to value made by the residences on the subject property as of January 1, 2004, were those determined by the County Board.

Evidence of actual value as presented by the Taxpayers is not persuasive and is an insufficient basis on which to grant relief.

Without evidence of the taxable value of any comparable property any equalization argument that the Taxpayer might make would necessarily fail. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999). Further it is not a sufficient basis for relief to argue that a component of a parcel has not been valued correctly or “equalized”, it is the taxable value of the parcel must be considered for equalization purposes. *Bumgarner v. Valley County*, 208 Neb. 361, 366 - 367, 303 N.W.2d 307,311 (1981).

V.
CONCLUSIONS OF LAW

1. The Commission has subject matter jurisdiction in this appeal.
2. The Commission has jurisdiction over the parties to this appeal.
3. 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.

**VI.
ORDER**

IT IS ORDERED THAT:

1. The decisions of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2004, are affirmed.
2. Taxable value of each parcel of the subject property for the tax year 2004 is:

Case No 04A-55

| | |
|-------------------|---------------------|
| Agricultural land | \$184,124.00 |
| Home Site | \$ 5,000.00 |
| Residence | \$101,492.00 |
| Outbuildings | <u>\$ 1,064.00</u> |
| Total | <u>\$291,680.00</u> |

Case No 04A-56

| | |
|-------------------|---------------------|
| Agricultural land | \$189,511.00 |
| Feedlot | \$ 32,950.00 |
| Home Sites | \$ 6,700.00 |
| Residences | \$ 61,908.00 |
| Farm Site | <u>\$ 4,350.00</u> |
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Case No 04A-57

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| Agricultural land | \$ 96,030.00 |
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| Farm Site | \$ 2,350.00 |
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| Total | <u>\$298,633.00</u> |

Case No 04A-58

| | |
|-------------------|----------------------|
| Agricultural land | \$ 28,055.00 |
| Home Site | \$ 5,000.00 |
| Residence | <u>\$ 71,893.00</u> |
| Total | <u>\$104,948.00.</u> |

3. This decision, if no appeal is timely filed, shall be certified to the Banner County Treasurer, and the Banner County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).
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 2004.

7. This order is effective for purposes of appeal on June 27, 2007.

Signed and Sealed. June 27, 2007.

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 (CUM. SUPP. 2006). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.