

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

GERALD K. LYON,	)	
	)	
Appellant,	)	Case No 06A-003
	)	
v.	)	
	)	DECISION AND ORDER AFFIRMING
	)	THE DECISION OF THE MADISON
MADISON COUNTY BOARD OF	)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,	)	DOCKET ENTRY TO DENY MOTIONS
	)	TO DISMISS FOR LACK OF
Appellee.	)	JURISDICTION AND FAILURE OF
	)	PROOF

The above-captioned case was called for a rehearing on the merits of an appeal by Gerald K. Lyon ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's hearing room on the 6th floor of the State Office Building in Lincoln, Lancaster County Nebraska, on January 9, 2008.

Commissioners Wickersham, Warnes, Salmon, and Hotz were present. Commissioner Wickersham presided at the hearing.

Gerald K. Lyon, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Joel E. Carlson, a Deputy County Attorney for Madison County, Nebraska, appeared as legal counsel for the Madison County Board of Equalization ("the County Board").

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

The Commission ordered the caption of the appeal be modified to reflect the interest of Gerald K. Lyon at the initial hearing of this appeal.

At the Conclusion of the Taxpayer's evidence the County Board moved for dismissal on the basis that the Commission lacked jurisdiction because the Taxpayer did not have standing. The motion to dismiss for lack of jurisdiction was denied.

The County Board, at the conclusion of the Taxpayer's evidence, moved for dismissal based on a failure of proof. That motion was denied.

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 this case is as follows.

## **I. ISSUES**

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2006, 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 is unreasonable or arbitrary; and

The taxable value of the subject property on January 1, 2006.

## **II. FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above captioned appeal to maintain the appeal.

2. The parcel of real property to which this appeal pertains is described as E $\frac{1}{2}$ SE $\frac{1}{4}$  Section 6, Township 21, Range 4, Madison County, Nebraska, ("the subject property").
3. Taxable value of the subject property placed on the assessment roll as of January 1, 2006, ("the assessment date") by the Madison County Assessor, value as proposed in a timely protest, and taxable value as determined by the County Board is shown in the following table:

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Description: E $\frac{1}{2}$ SE $\frac{1}{4}$  Section 6, Township 21, Range 4, Madison County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$108,136.00	\$80,000.00	\$108,136.00
Home Site	\$ 7,070.00	\$In Ag	\$ 7,070.00
Residence	\$15,365.00	\$In outbuildings	\$15,365.00
Farm Site	\$ 3,754.00	\$In Ag	\$ 3,754.00
Outbuilding	\$ 24,201.00	\$15,000.00	\$ 24,201.00
Total	\$158,526.00	\$95,000.00	\$158,526.00

4. An appeal of the County Board's decision was filed with the Commission.
5. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
6. An Order for Hearing and Notice of Hearing issued on June 19, 2007, set a hearing of the appeal for September 12, 2007, at 8:00 a.m. CDST. A hearing was held at that date and time.

7. The Commission ordered a rehearing of the appeal and set a hearing for December 11, 2007. The rehearing was continued by order of the Commission until January 9, 2008 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. Taxable value of the subject property as of the assessment date for the tax year 2006 is:

Agricultural land	\$108,136.00
Farm Site	\$ 3,754.00
Home Site	\$ 7,070.00
Residence	\$ 15,365.00
Outbuildings	<u>\$ 24,201.00</u>
Total	<u>\$158,526.00.</u>

**III.**  
**APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in this appeal is over 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. “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. "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).
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 property was not fairly and proportionately equalized or that valuation placed upon 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).
23. A motion to dismiss for failure of proof may be granted if there is no evidence that the decision of the County Board was incorrect. Neb. Rev. Stat. §77-5016(8) (Cum. Supp. 2006).
24. In order to have standing, one must have some legal or equitable right, title, or interest in the subject of the controversy. *Ottaco Acceptance, Inc. v. Larkin*, 273 Neb. 765, 733 N.W.2d 539 (2007).

#### **IV. ANALYSIS**

The Taxpayer testified that he occupied the residence on the subject property and as consideration for use of the residence paid all property taxes levied on the subject property. The tenancy and obligation to pay taxes is a sufficient interest to maintain this appeal.

The subject property is an improved tract of agricultural land and horticultural land. Improvements include a mobile home used as a residence, a machine shed and a Behlen Quonset. (E6:3 and E6:8). The Taxpayer asserted that the taxable value of the land component as determined by the County Board did not take into account the steep slope of the land or its erodability. The Taxpayer also asserted that the contribution to value of the improvement components as determined by the County Board exceed their actual value.

The United States Department of Agriculture Soil Conservation Service has prepared a soil survey of Madison County Nebraska. *Soil Survey of Madison County, Nebraska*, United States Department of Agriculture, Natural Resources Conservation Service, General Soil Map. (1981) (“Soil Survey”). The Soil Survey contains detailed descriptions of the soils found in Madison County. *Soil Survey* Supra, Pgs 17 through 72. Soils can differ in slope, stoniness, salinity, wetness, degree of erosion and other characteristics that affect their use. *Soil Survey* Supra, Pg 17. A soil survey is one of the principal tools used in the classification of agricultural land in Nebraska. 350 Neb. Admin. Code, ch 14 §004.08A (05/05). All soil types in a county are assigned to a Land Capability Group. 350 Neb. Admin. Code, ch 14 §004.08B (05/05). The assignment of soil types to Land Capability Groups is made based on a conversion table published by the Property Tax Administrator. See, Directive 99-8, Property Tax Administrator, (12/99). The main criteria for different Land Capability Groups are types of soil, slope, and erosion. 350 Neb. Admin. Code, ch 14 §004.08C (05/05). The subject property is an 80 acre parcel. (E6:4). There are 22.9 acres of the subject property that have a soil symbol of NpD2. (E4:4). Soils associated with the symbol NpD2 are soils in the Nora-Crofton complex, 6 to 11 percent slopes, eroded. *Soil Survey*, Supra pg 57. The NpD2 soils are described as strongly sloping, eroded and erodible. *Soil Survey* Supra Pgs. 57 and 58. There are 7.7 acres of the subject property that have a soil symbol of CuE2. (E6:4). Soils associated with the symbol CuE2 are the Crofton-Nora complex, 11 to 15 percent slopes, eroded soils. *Soil Survey*, Supra pg 29. Soils of the CuE2 type are found on moderately steep soils on ridges and side slopes of uplands. *Soil Survey*, Supra pg 29. Soils of the CuE2 type are not suitable for irrigation due to their slope and the erodability. *Soil Survey*, Supra pg 30. There are 8.10 acres of the subject

property that have a soil symbol of NoD. (E6:4) Soils associated with the symbol NoD are the Nora-silty clay loam, 6 to 11 percent slope soils. *Soil Survey*, Supra pg 55. There are 10.8 acres of the subject property that have a soil symbol of NoC. (E6:4) Soils associated with the symbol NoC are the Nora-silty clay loam, 2 to 6 percent slope soils. *Soil Survey*, Supra pg 55. The land classifications found in the property record file for the subject property are consistent with the land as described by the Taxpayer.

There is nothing in the evidence that suggests that the land component of the subject property was not properly classified.

The Taxpayer testified that the contribution to value of the mobile home on the subject property was not more than \$4,000.00. The Taxpayer testified that \$4,000.00 was his purchase price. The description of the mobile home found in the property record file shows that the mobile home has been improved with a basement, porch and deck. There is no evidence that the estimates of value for the mobile home were based on its improved status or value in place. The Taxpayer testified that he did not believe that two buildings, a barn and a shed made any contribution to value. The differences between the values adopted by the County Board and the those proposed by the Taxpayer represent a difference of opinion but are not sufficient proof that the County Board's decision was arbitrary or unreasonable.

The Taxpayer did not offer clear and convincing evidence that the decision of the County Board was unreasonable or arbitrary.

**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 decision of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

**VI.  
ORDER**

**IT IS ORDERED THAT:**

1. The decision of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2006, is affirmed.
2. Taxable value of the subject property for the tax year 2006 is:

Agricultural land	\$108,136.00
Farm Site	\$ 3,754.00
Home Site	\$ 7,070.00
Residence	\$ 15,365.00
Outbuildings	<u>\$ 24,201.00</u>
Total	<u><u>\$158,526.00.</u></u>
3. The caption of the appeal is reformed to reflect the interest of Gerald K. Lyon.

4. The County Board's motion to dismiss for lack of jurisdiction was denied at hearing and is reaffirmed by this order.
5. The County Board's motion to dismiss for failure of evidence to show that the County Board's decision was incorrect was denied at hearing and is reaffirmed by this order.
6. This decision, if no appeal is timely filed, shall be certified to the Madison County Treasurer, and the Madison County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).
7. Any request for relief, by any party, which is not specifically provided for by this order is denied.
8. Each party is to bear its own costs in this proceeding.
9. This decision shall only be applicable to tax year 2006.
10. This order is effective for purposes of appeal on January 15, 2008.

**Signed and Sealed.** January 15, 2008.

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Wm. R. Wickersham, Commissioner

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Nancy J. Salmon, Commissioner

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Robert W. Hotz, Commissioner

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William C. Warnes, Commissioner

**SEAL**

**APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.**