

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

JAMES A. WIDTFELDT,	)	
	)	
Appellant,	)	Case Nos. 09A 068, 09A 109, 09A 110
	)	
v.	)	DOCKET ENTRY AND ORDER
	)	AFFIRMING THE DECISIONS OF
HOLT COUNTY BOARD OF	)	THE HOLT COUNTY BOARD OF
EQUALIZATION,	)	EQUALIZATION
	)	
Appellee.	)	

The above-captioned cases were called for a hearing on the merits of appeals by James A. Widtfeldt ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Holiday Inn Express, 920 S. 20th St., Norfolk, Nebraska, on November 3, 2010, pursuant to an Order for Hearing and Notice of Hearing issued August 30, 2010. Commissioner Wickersham, Chairperson of the Commission, was the presiding hearing officer. Commissioner Warnes was absent. Commissioner Wickersham, as Chairperson, designated Commissioners Wickersham, Salmon, and Hotz as a panel of the Commission to hear the appeal. Commissioner Salmon was excused. Commissioner Hotz was present. The appeal was heard by a quorum of a panel of the Commission.

James A. Widtfeldt was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Thomas P. Herzog, County Attorney for Holt County, Nebraska, was present as legal counsel for the Holt County Board of Equalization ("the County Board").

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

The Commission is required to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-

5018 (Reissue 2009). The final decision and order of the Commission in the consolidated cases was stated on the record and is memorialized by this Docket Entry and Order.

## **I. ISSUES**

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2009, 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, 2009.

## **II. FINDINGS OF FACT**

The Commission found and determined 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 ("the Subject Property") described in the tables below.
3. Taxable value of each parcel of the subject property placed on the assessment roll as of January 1, 2009, ("the assessment date") by the Holt County Assessor, value as proposed in timely protests pursuant to section 77-1502 of Nebraska Statutes, and taxable value as determined by the County Board is shown in the following tables:

Case No. 09A 068

Description: All Section 29, Township 33, Range 13, Holt County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$218,685.00	\$109,340.00	\$218,685.00
Total	\$218,685.00	\$109,340.00	\$218,685.00

Case No. 09A 109

Description: N $\frac{1}{2}$ , SW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$  Section 25, Township 33, Range 13, Holt County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$209,325.00	\$104,662.00	\$209,325.00
Total	\$209,325.00	\$104,662.00	\$209,325.00

Case No. 09A 110

Description: S $\frac{1}{2}$ N $\frac{1}{2}$ , S $\frac{1}{2}$  Section 24, Township 33, Range 13, Holt County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$160,905.00	\$80,542.00	\$160,905.00
Total	\$160,905.00	\$80,542.00	\$160,905.00

4. Appeals of the County Board's decisions were filed with the Commission.
5. The appeals were consolidated for hearing by order of the Commission.
6. An Order for Hearing and Notice of Hearing issued on August 30, 2010, set a hearing of the appeals for November 3, 2010, at 9:00 a.m. CDST or as soon thereafter as possible.
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. Taxable value of each parcel for the tax year 2009 is:

Case No. 09A 068

Agricultural land	\$ 218,685.00
Total	<u>\$ 218,685.00</u>

Case No. 09A 109

Agricultural land	\$ 209,325.00
Total	<u>\$ 209,325.00</u>

Case No. 09A 110

Agricultural land	\$ 160,905.00
Total	<u>\$ 160,905.00.</u>

**III.  
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in each of the above captioned appeals is over all questions necessary to determine taxable value. Neb. Rev. Stat. §77-5016(7) (Reissue 2009).
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 2009).

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 2009).
4. “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).
5. 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 2009).
6. 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) (Reissue 2009).
7. Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2009).
8. Agricultural land and horticultural land means a parcel of land which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure." Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).
9. "Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and

art of agriculture, aquaculture, or horticulture. Agricultural or horticultural purposes includes the following uses of land:

(a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and

(b) 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." Neb. Rev. Stat. §77-1359 (2)

(Reissue 2009).

10. "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).
11. 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, 580 N.W.2d 561 (1998).
12. In all appeals, excepting those arising under section 77-1606, if the appellant presents no evidence to show that the order, decision, determination, or action appealed from is incorrect, the commission shall deny the appeal. Neb. Rev. Stat. 77-5016(8) (Reissue 2009).

**IV.  
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 presented no evidence that the order, decision, determination, or action appealed from is incorrect and the Commission is required to deny relief.

**V.  
ORDER**

**IT IS ORDERED THAT:**

1. The decisions of the County Board determining taxable values of the parcels comprising subject property as of the assessment date, January 1, 2009, are affirmed.
2. Taxable value, for the tax year 2009, of each parcel described in an appeal as referenced by the Case No. is:

Case No. 09A 068

Agricultural land    \$ 218,685.00

Total                    \$ 218,685.00

Case No. 09A 109

Agricultural land    \$ 209,325.00

Total                    \$ 209,325.00

Case No. 09A 110

Agricultural land	\$ 160,905.00
Total	<u>\$ 160,905.00.</u>

3. This decision, if no appeal is timely filed, shall be certified to the Holt County Treasurer, and the Holt County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2009).
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 2009.
7. This order is effective for purposes of appeal on November 4, 2010.

Signed and Sealed. November 11, 2010.

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Robert W. Hotz, Commissioner

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Wm. R. Wickersham, Commissioner

**SEAL**

**APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (REISSUE 2009), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.**