

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

FARMER'S COOP GRAIN & SUPPLY)
CO.,)
)
Appellant,)
)
v.)
)
HITCHCOCK COUNTY BOARD OF)
EQUALIZATION,)
)
Appellee.)

Case No. 09C 278

DECISION AND ORDER
AFFIRMING THE DECISION OF
THE HITCHCOCK COUNTY BOARD OF
EQUALIZATION

The above-captioned case was called for a hearing on the merits of an appeal by Farmer's Coop Grain & Supply Co. ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Holiday Inn Express, 300 Holiday Frontage Road, North Platte, Nebraska, on October 4, 2010, pursuant to an Order for Hearing and Notice of Hearing issued May 24, 2010 as amended by an Order dated July 26, 2010. Commissioner Warnes, Vice-Chairperson of the Commission, was the presiding hearing officer. Commissioner Wickersham, Chairperson of the Commission, was absent. Commissioner Warnes, as Vice-Chairperson acting in the absence of the Chairperson, designated Commissioners Warnes, 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.

Connie Renfro, Manager of Farmer's Coop Grain & Supply Co., was present at the hearing. G. Peter Burger appeared as legal counsel for the Taxpayer.

D. Eugene Garner, County Attorney for Hitchcock County, Nebraska, was present as legal counsel for the Hitchcock 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 this case is as follows.

**I.
ISSUES**

The Taxpayer has asserted that actual value of the subject property as of January 1, 2009, is less than actual value as determined by the County Board. The issues on appeal related to that assertion are:

Whether the decision of the County Board, determining actual value of the subject property, is unreasonable or arbitrary; and

The actual value of the subject property on January 1, 2009.

**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 ("the Subject Property") is described in the table below.
3. Actual value of the subject property placed on the assessment roll as of January 1, 2009, ("the assessment date") by the Hitchcock County Assessor, value as proposed in a timely

protest, and actual value as determined by the County Board is shown in the following table:

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Description: PT NW 1/4 / NW 1/ 4 SEC 13 - 2 - 35 1.32 AC, Hitchcock County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$3,720.00	Included in Total	\$3,720.00
Improvement	\$465,770.00	Included in Total	\$465,770.00
Total	\$469,490.00	\$200,000.00	\$469,490.00

4. An appeal of the County Board's decision was filed with the Commission.
5. An Order for Hearing and Notice of Hearing issued on May 24, 2010, as amended by an Order issued on July 26, 2010, set a hearing of the appeal for October 4, 2010, at 3:00 p.m. CDST.
6. 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.
7. Actual value of the subject property as of the assessment date for the tax year 2009 is:

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Land value \$3,720.00

Improvement value \$459,530.00

Total value \$463,250.00

III. APPLICABLE LAW

1. Subject matter jurisdiction of the Commission in this appeal 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. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *City of York v. York County Bd. Of Equalization*, 266 Neb. 297, 64 N.W.2d 445 (2003).
8. 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).
9. The presumption disappears if there is competent evidence to the contrary. *Id.*
10. The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (8) (Reissue 2009).
11. Proof that the order, decision, determination, or action appealed from was unreasonable or arbitrary must be made by clear and convincing evidence. See, e.g., *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
12. "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).

13. 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).
14. 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).
15. 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).
16. 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).
17. A Taxpayer, who only produced evidence that was aimed at discrediting valuation methods utilized by the 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).
18. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value).

IV. ANALYSIS

The subject property is a 1.32 acre parcel on which there are two 100,000 bushel grain bins and one 10,000 bushel per hour elevator leg which is 115 feet tall. (E2:15).

The Taxpayer has asserted that actual value of the subject property as of January 1, 2009, is less than actual value as determined by the County Board.

The Taxpayer alleged that the taxable value of the subject property for 2009 is less than assessed because it is an isolated "grain storage facility" as compared to a "grain handling facility." The County Board determined that the actual value of the subject property for 2009 is \$463,250.

The appraiser for the Taxpayer provided an appraisal as shown in Exhibit 4. He provided five (5) alleged comparables to the subject property, but did not provide the property record files for these alleged comparables as required by the Commission's Order for Hearing, paragraph 13 (E4:20 to 24). The adjustments he made to the alleged comparables are shown on Exhibit 4 page 25. The effective date of the Taxpayer's appraisal being September 1, 2009 while the date for assessment required to be used by the County Assessor was January 1, 2009. However, the appraiser for the Taxpayer testified that his opinion of value would be the same for January 1, 2009 (E4:31). It was his opinion that the actual value of the subject property as of January 1, 2009 was \$275,000. (E4:29). The appraiser for the Taxpayer testified that he used all three

appraisal methods to value the subject property - Sales Comparison, Cost, and Income. (E4:25, E4:27 and E4:28). His reconciled value was \$275,000.

The Commission's review of the appraisal for the Taxpayer shows that all of the parcels alleged to be comparable to the subject property sold after January 1, 2009, which is the date by which the County Assessor was required to assess the subject property. These sales would not have been available to the County Assessor to use for comparisons in making the 2009 assessment of taxable value for the subject property.

There was no evidence provided that quantified the effect on actual value of the difference between a grain handling facility and a grain storage facility. The testimony of the Taxpayer's appraiser distinguished a grain handling facility as having present scales for weighing, an office, and a dryer. The testimony of the Taxpayer's appraiser was that since these items were not present at the subject property it would be necessary to transport the grain by truck to another facility. It was his opinion that the subject property is a grain storage facility and its actual value is less than a grain handling facility. The Commission has before it only the evidence of value supported by the five comparable sales for which the property record files were not provided. The absence of the property record files for these comparable parcels prevents the Commission from independently evaluating their comparability to the subject property.

The appraiser for the Taxpayer testified that he was not familiar with what variables are used to conclude parcels are comparable. In addition, he testified that he had not examined the deed of conveyance for the five sales used in the market approach of his appraisal. He utilized these comparable sales despite the fact that the parcel shown as Sale #3, which sold in April of 2009, had been sold by a Trustee in Bankruptcy, Sale #2 was a sale between relatives that he

believed was an “arm’s length transaction,” even though it had not been offered on the open market, and alleged comparable sale #1 was purchased by the Appellant and a 20% adjustment due to “motivation” had been used. The appraiser testified that he was not aware that the appellant had been renting the parcel shown as comparable sale #1 before its purchase.

The Commission does not find merit to the other allegations testified to by the Taxpayer. A taxpayer who offers no evidence that the subject property is valued in excess of its actual value and who only produces evidence that is aimed at discrediting the valuation methods utilized by county assessor fails to meet his or her burden of proving that the value of the property was not fairly and proportionately equalized or that valuation placed upon the 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).

“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. The 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.... 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.” *Id.* Taxpayer must introduce competent evidence of actual value of its property in order to successfully claim that a 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).

The Commission finds that the Taxpayer has not provided competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination.

The Commission also finds that the Taxpayer has not provided clear and convincing evidence that the County Board’s decision was arbitrary or unreasonable. The appeal of the Taxpayer is denied.

**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 produced competent evidence that the County Board failed to faithfully perform its official duties and to act on sufficient competent evidence to justify its actions.
4. 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 actual value of the subject property as of the assessment date, January 1, 2009, is affirmed.

2. Actual value, for the tax year 2009, of the subject property is:

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Land value \$3,720.00

Improvement value \$459,530.00

Total value \$463,250.00

3. This decision, if no appeal is timely filed, shall be certified to the Hitchcock County Treasurer, and the Hitchcock 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 3, 2010.

Signed and Sealed. November 3, 2010.

Robert W. Hotz, Commissioner

William C. Warnes, 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.