

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

PHILLIP AND LAVONNE LUBKE)	
TRUST,)	
)	CASE NO. 03A-23
Appellant,)	
)	
vs.)	FINDINGS AND
)	FINAL ORDER
PIERCE COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

Appearances:

For the Appellant: Phillip Lubke
P.O. Box 184
Hadar, NE 68738

For the Appellee: Verlyn Luebbe
Pierce County Attorney
P.O. Box 203
Pierce, NE 68787

Before: Commissioners Lore, Reynolds, and Wickersham.

**I.
STATEMENT OF THE CASE**

The Phillip and LaVonne Lubke Trust ("the Taxpayer") owns a 160-acre tract of land legally described as the NW¼ of Section 10, Township 26, Range 3, Pierce County, Nebraska. (E10:6). There are no improvements on the property. (E10:6).

The Pierce County Assessor ("the Assessor") determined that 80% of the actual or fair market value of the subject property was \$116,225 as of the January 1, 2003, assessment date. (E10:5). The Taxpayer timely filed a protest of that determination and alleged that 80% of the actual or fair market

value of the property was \$93,000. (E1). The Pierce County Board of Equalization ("the Board") granted the protest in part, and determined that 80% of actual or fair market value was \$114,850. (E1).

The Taxpayer filed an appeal of the Board's decision on August 19, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 5, 2003, which the Board answered on October 6, 2003. The Board also filed a Cross-Appeal alleging that 80% of the actual or fair market value of the subject property was \$116,225, the amount originally determined by the Assessor.

The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on March 26, 2004. An Affidavit of Service in the Commission's records establishes that a copy of the Order and Notice was served on each of the Parties.

The Commission called the case for a hearing on the merits of the appeal in the City of Norfolk, Madison County, Nebraska, on June 15, 2004. The Taxpayer appeared personally at the hearing. The Board appeared through Verlyn Luebbe, the Pierce County Attorney. Commissioners Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer. Commissioner Hans was excused from the proceedings.

The only issue before the Commission is the actual or fair market value of 78.5 acres of grassland enrolled in the federal

Conservation Reserve Program. The Board, at the close of the Taxpayer's case-in-chief, moved to dismiss the Taxpayer's appeal for failure to meet the statutory burden.

II. ISSUES

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayer's valuation protest was incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determination of value was unreasonable.

III. APPLICABLE LAW

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the Board's decision was incorrect and (2) that the Board's decision was unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7)(Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51)). The "unreasonable or arbitrary" element requires clear and convincing evidence that the Board either (1) failed to faithfully perform its official duties; or (2) failed to act upon sufficient competent evidence in making its decision. The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the Board's value was unreasonable. *Garvey Elevators v.*

Adams County Bd., 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

**IV.
FINDINGS OF FACT**

1. The Trustee's opinion of actual or fair market value is \$32,347.50 for the 78.5 acres at issue. ($\$25,798 \div 80\% = \$32,247.50$).
2. The Taxpayer alleged that these 78.5 acres were unique, and therefore adduced no evidence of either assessed values of comparable properties or sale prices of comparable properties.
3. The Taxpayer testified that he received \$59.50 per acre for each of the 78.5 acres enrolled in the federal Conservation Reserve Program. However, no evidence of typical or market expenses or typical or market capitalization rates were made a part of the record. No determination of value can be made under the Income Approach based on this record.
4. The Taxpayer adduced no evidence that the Board's decision was incorrect and either unreasonable or arbitrary.

**V.
ANALYSIS**

The Taxpayer alleged that 78.5 acres of grassland on the subject property were overvalued when compared to 3G, 3G1 and 4G

grassland values shown on Exhibit 8. The Property Tax Administrator's Rules and Regulations require that land subject to a CRP contract be classified at its current use. Title 350, Neb. Admin. Code, Ch. 14, §004F(07/02). The 78.5 acres in dispute on the subject property are classified as grassland. (E10:6). The Rules and Regulations also require that the values for these CRP acres "reflect the local market for similar property." Title 350, Neb. Admin. Code, ch. 14, §004.04F (07/02).

The Taxpayer's only evidence of value was opinion evidence. This opinion evidence was based on the Assessor's values for grassland not subject to CRP contracts. The Taxpayer adduced no evidence of the actual or fair market value, or assessed values, of grassland subject to CRP contracts in Pierce County.

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 Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999). 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. *US*

Ecology, Inc. v. Boyd County Bd of Equalization, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).

**VI.
CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the Parties and over the subject matter of this appeal.
2. The Commission is required to affirm the decision of the Board unless evidence is adduced establishing that the Board's action was incorrect and either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).
3. The Board is presumed to have faithfully performed its official duties in determining the actual or fair market value of the property. The Board is also presumed to have acted upon sufficient competent evidence to justify its decision. These presumptions remain until the Taxpayer presents competent evidence to the contrary. If the presumption is extinguished the reasonableness of the Board's value becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests on the Taxpayer. *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).

4. "Actual value" is defined as the market value of real property in the ordinary course of trade, or 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 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. Neb. Rev. Stat. §77-112 (Reissue 2003).
5. 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 Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).
6. The 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).
7. The Taxpayer failed to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary.
8. The Board's Motion to Dismiss must accordingly be granted.
9. No evidence was adduced in support of the Board's Cross-Appeal. That Cross-Appeal must accordingly be dismissed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Board's Motion to Dismiss is granted.
2. The Board's Cross-Appeal is dismissed.
3. The Pierce County Board of Equalization's Order setting the assessed value of the subject property for tax year 2003 is therefore final.
4. The Taxpayer's real property legally described as the NW¼ of Section 10, Township 26, Range 3, Pierce County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$114,850
Improvements	\$ -0-
Total	\$114,850
5. Any request for relief by any Party not specifically granted by this order is denied.
6. This decision, if no appeal is filed, shall be certified to the Pierce County Treasurer, and the Pierce County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).
7. This decision shall only be applicable to tax year 2003.

8. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

I certify that Commissioner Wickersham made and entered the above and foregoing Findings and Orders in this appeal on the 15th day of June, 2004. The same were approved and confirmed by Commissioners Lore and Reynolds and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Reissue 2003).

Signed and sealed this 17th day of June, 2004.

SEAL

Wm. R. Wickersham, Chair