

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

TRIPLE B, INC.,)	CASE NO.	04C-24
)		
Appellant,)		04C-25
)		04C-26
vs.)		
)	FINDINGS AND FINAL ORDER	
HOLT COUNTY BOARD OF)	AFFIRMING DECISION OF	
EQUALIZATION,)	COUNTY BOARD OF EQUALIZATION	
)		
Appellee.)		

SUMMARY OF DECISION

Triple B, Inc., appeals the Holt County Board of Equalization's orders denying the Taxpayer's 2004 valuation protests of the land component of the subject properties. The Commission affirms the Board's decisions.

**I.
ISSUES**

The issues before the Commission are (1) whether the Board's decisions to deny the Taxpayers' valuation and equalization protests were incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determinations of value were unreasonable.

**II.
STATEMENT OF THE CASE**

The Taxpayer owns three tracts of land in Holt County, Nebraska. The subject property in Case Number 04C-24 is an unimproved 177.98 acre tract of land legally described as Part of the SW¹/₄ and the W¹/₂SW¹/₄ except for a 1.02 acre tract of land in

Section 5, Township 32, Range 12, plus 1 acre in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ in Section 6, Township 32, Range 12, Holt County, Nebraska. (E18:1 - 2). The Assessor determined that 80% of the actual or fair market value of the subject property's land component was \$162,820 as of the January 1, 2004, assessment date. (E1). The Taxpayer timely protested that determination and alleged that 80% of the actual or fair market value was of the subject property's land component was \$141,275. (E1). The Holt County Board of Equalization ("the Board") granted the protest in part.

The subject property in Case Number 04C-25 is an unimproved 22 acre tract of land legally described as Part of the E $\frac{1}{2}$ NE $\frac{1}{4}$ in Section 7, Township 32, Range 12, Holt County, Nebraska. (E20:1 - 2). The Assessor determined that 80% of the actual or fair market value of the subject property's land component was \$24,090 as of the assessment date. (E2). The Taxpayer timely protested that determination and alleged that 80% of the actual or fair market value of the subject property was \$17,463. (E2). The Board denied the protest. (E2).

The subject property in Case Number 04C-26 is a 237 acre tract of land legally described as the NW $\frac{1}{4}$ EXC 3 Acres and the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 8, Township 32, Range 12, Holt County, Nebraska. (E22:1 - 2). The Assessor determined that the 80% of the actual or fair market value of the land component of the subject property was \$180,930 as of the assessment date. (E3). The

Taxpayer timely protested that determination and alleged that 80% of the subject property's actual or fair market value of the land component of the subject property was \$146,181. (E3). The Board denied the protest. (E3).

The Taxpayer appealed each of the Board's decisions on August 10, 2004. The Commission served a Notice in Lieu of Summons on the Board which the Board answered. The Commission then consolidated each of the cases for purposes of hearing, and issued an Order for Hearing and Notice of Hearing. 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 May 27, 2005. The Taxpayer appeared at the hearing through its President, James L. Birkel, Esq. The Board appeared through Thomas P. Herzog, the Holt County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Wickersham served as the presiding officer.

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) (Cum. Supp. 2004, as amended by 2005

Neb. Laws, L.B. 15, §9). 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**

The Commission finds and determines that:

1. The Taxpayer adduced evidence concerning the value of the property as part of an Internal Revenue Service §1031 Exchange.
2. The Taxpayer's President's opinions of actual or fair market value were based on the value set as part of the §1031 Exchange.

**V.
ANALYSIS**

The Taxpayer acquired the subject properties, personal property and other agricultural land which are not part of the appeals for \$421,000 in March, 2004. The purchase price included certain personal property and also included certain buildings

with an assessed value of \$100. (Case Number 04C-24). The Taxpayer protested that determination, and the Board granted relief. The only issue before the Commission is the value of the agricultural land.

The Taxpayer's President testified that the assessed values of the grass land component of the subject properties [\$26,915 for 91 acres in Case Number 04C-26 (E22:2), and \$10,830 for 26.10 acres in Case Number 04C-24) (E18:2)] are not at issue.

The subject properties are irrigated with center pivot systems which draw water from the Turkey Creek and two wells. Neither of the water sources are located on the subject properties. Irrigation is defined as the artificial application of water to the soil for full crop production. Title 350, Neb. Admin. Code, ch. 14, §002.37 (03/2004). Irrigated land is defined as land upon which irrigation is applied for the production of grass or other crops. Title 350, Neb. Admin. Code, ch. 14, §002.37B (03/2004). The Taxpayer's President testified that in his opinion the actual or fair market value of the 151 acres of irrigated land was \$140,170 in Case Number 04C-24 (assessed value of \$151,905 from E18:2); \$20,900 for the 22 acres in Case Number 04C-25 (assessed value of \$24,900 from E20:2); and \$140,438 for the 145 acres of irrigated land in Case Number 04C-26 (assessed value of \$154,015 from E22:2).

"It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value." *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2D 631, 637, (1998). The basis of the Taxpayer's President's opinion of actual or fair market value is the value of the properties based on a Internal Revenue Service §1031 exchange which closed on March 15, 2004. (E5:9). The transaction occurred as part of the settlement of the Taxpayer's President's mother's estate. The Taxpayer adduced no evidence that the value set for the subject properties as part of the §1031 exchange constituted actual or fair market value. The aggregate value of the §1031 transaction included property not subject to appeal and included personal property. The Board and the Taxpayer agreed on the value of the property not subject to appeal, but did not agree on the value of the personal property included in the transaction. Allocation of the value of the §1031 transaction real property and personal property could have a material effect on the value of the real property

component. The Taxpayer's President presented three different values for the personal property component: \$99,000; \$50,000; and \$60,000. The Commission was unable to determine the value of the personal property involved in the §1031 exchange, leaving open a determination of value for the real property component of the exchange.

The Taxpayer also alleges that the sale of two "comparable" properties supports its allegation that the subject properties are overvalued. (E6; E7). The first sale is dated March 1, 2004 (E6:1) and the second sale is dated April 8, 2004 (E7:1). The Taxpayer alleges that the property which is the subject of the second sale was incorrectly assessed as grassland when it was in fact used as irrigated land.

The subject property's actual or fair market value may be established using assessed values of "comparable" properties. *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998). This methodology, however, requires a taxpayer to demonstrate by clear and convincing evidence that the properties offered as "comparables" are truly comparable and that the assessed values of the properties represent actual or fair market value. *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998); *Westgate Recreation Ass'n v. Papio-Missouri River Natural Resources Dist.*, 250 Neb. 10, 17, 547

N.W.2d 484, 492 (1996). The Taxpayer's "comparables" have differing amounts of grass and irrigated land, and one of the "comparables" has a significant "dryland" component. (E6:4). The Taxpayer provided no evidence to account for these differences.

The Taxpayer's equalization issue is not supported by clear and convincing evidence as required by *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984), and must be denied.

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) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).
3. The Board is presumed to have faithfully performed its official duties. The Board is also presumed to have acted upon sufficient competent evidence to justify its decisions. 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. The Taxpayer has failed to adduce clear and convincing evidence that the Board's decisions were incorrect and either unreasonable or arbitrary. The Board's decisions must therefore be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Holt County Board of Equalization's Orders setting the subject properties' 2004 assessed values are affirmed.

2. The Taxpayer's real property in Case Number 04C-24 legally described as Part of the SW $\frac{1}{4}$ and the W $\frac{1}{2}$ SW $\frac{1}{4}$ except for a 1.02 acre tract of land in Section 5, Township 32, Range 12, plus 1 acre in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ in Section 6, Township 32, Range 12, Holt County, Nebraska, shall be valued for purposes of taxation as follows for tax year 2004 as determined by the Board:

Land	\$162,735
Improvements	\$ -0-
Total	\$162,735

3. The Taxpayer's real property in Case Number 04C-25 legally described as Part of the E $\frac{1}{2}$ NE $\frac{1}{4}$ in Section 7, Township 32, Range 12, Holt County, Nebraska, shall be valued for purposes of taxation as follows for tax year 2004 as determined by the Board:

Land	\$ 24,090
Improvements	\$ -0-
Total	\$ 24,090

4. The Taxpayer's real property in Case Number 04C-26 legally described as NW $\frac{1}{4}$ EXC 3 Acres and the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 8, Township 32, Range 12, Holt County, Nebraska, shall be valued for purposes of taxation as follows for tax year 2004 as determined by the Board:

Land	\$162,735
Improvements	\$ -0-
Total	\$162,735

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 Holt County Treasurer, and the Holt County Assessor, pursuant to Neb. Rev. Stat. §77-5016(9) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).
7. This decision shall only be applicable to tax year 2004.
8. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

I certify that Commissioner Lore made and entered the above and foregoing Findings and Orders in this appeal on the 27th day of May, 2005. The same were approved and confirmed by Commissioners Hans, Reynolds and Wickersham and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §7).

Signed and sealed this 27th day of May, 2005.

SEAL

Wm. R. Wickersham, Chair

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 APPEAL MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW IN NEBRASKA REVISED STATUTE §77-5019 (REISSUE 2003, AS AMENDED BY 2005 NEB. LAWS, L.B. 15, §11). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.

PLEASE NOTE: You will only be notified of a change in assessed value for your property for tax year 2005 if the 2005 assessed value differs from the 2004 assessed value as determined by your Assessor or County Board of Equalization. The Commission's decision has no impact on that determination. You should contact your Assessor's Office after March 19, 2005, to determine your property's assessed value for 2005. If you are unsatisfied with that value, you must file a protest on or after June 1, and before July 1, 2005. If you fail to file a protest, there can be no change to the Assessor's determination of the 2005 assessed value for your property.