

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

JIMMIE D. WOODWARD and SHIRLEY))	
WOODWARD,)	
)	CASE NO. 04A-109
Appellants,)	
)	
vs.)	FINDINGS AND FINAL ORDER
)	AFFIRMING DECISION OF THE
DIXON COUNTY BOARD OF)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	

SUMMARY

Jimie D. Woodward and Shirley Woodward ("the Taxpayers") own a 112.03-acre tract of agricultural land in Dixon County, Nebraska. The Taxpayers protested the Dixon County Assessor's ("the Assessor's") proposed 2004 value to the Dixon County Board of Equalization ("the Board"). The Board denied the Taxpayers' protest and increased the assessed value to account for additional acres of crop land.

**I.
ISSUES**

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

II.
STATEMENT OF THE CASE

The Taxpayers' unimproved agricultural land is legally described as the N $\frac{1}{2}$ NW $\frac{1}{4}$ & N $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 5, Township 28, Range 5, Dixon County, Nebraska. (E9:2). The Assessor determined that 80% of the subject property's actual or fair market value was \$92,385 as of the January 1, 2004, assessment date. (E1). The Taxpayers timely protested that determination and alleged that 80% of the subject property's actual or fair market value was \$52,000. The Board denied the protest and increased the assessed value to \$95,335 to account for additional acres of crop land. (E1).

The Taxpayers appealed the Board's decision on August 24, 2004. The Commission served a Notice in Lieu of Summons on the Board which the Board answered. The Commission issued an Order for Hearing and Notice of Hearing and served copies of each document on each of the Parties. The Commission, as provided in the Notice of Hearing, called the case for a hearing on the merits of the appeal in the City of Lincoln, Lancaster County, Nebraska, on November 2, 2005. The Taxpayers appeared personally at the hearing. The Board appeared through Leland K. Miner, Esq., the Dixon County Attorney. Commissioners Hans, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer. Commissioner Lore was excused from the proceedings.

III.
APPLICABLE LAW

The Taxpayers are required to demonstrate by clear and convincing evidence (1) that the Board's decision was incorrect and (2) that the Board's decision was either 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 Taxpayers, 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 Taxpayers acquired the subject property at an auction for \$65,000 on April 20, 2004, where one of the Taxpayers and one other individual made bids for the property.
2. The number of acres of farmable land (82.1 acres) are not at issue in this appeal.

3. The issue of equalization between agricultural market areas within Dixon County was not raised in the proceedings before the Dixon County Board of Equalization.
4. The Taxpayers' purchase of the subject property was not an arm's-length transaction.

**V.
ANALYSIS**

The Taxpayers acquired the subject property at an auction on April 20, 2004, for \$65,000. (E7). The assessment date at issue is January 1, 2004. The Taxpayer contends, however, that the price paid represents actual or fair market value. The price paid for real property may be taken into consideration in determining the actual value. The purchase price standing alone, however, is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value 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 Taxpayers' purchase of the subject property was at an auction where only two people bid on the property, the sale was made at the direction of a court, and payment in full was required on the date of sale.

The Taxpayers offered a number of parcels of agricultural land as "comparables" for the subject property. (E3 - E7). The Taxpayers were not familiar with any of the properties offered as "comparables." Furthermore, these "comparable" sales included improved and unimproved properties; the dates of sale ranged between 2001 and 2004; and the assessed value to sales price ratios ranged from approximately 61% to 102%. The Taxpayers were also unable to testify as to whether the assessed values for these properties were those values in place at the time of sale or the 2004 or the 2005 assessed values.

Under professionally accepted mass appraisal methods, no two parcels of land are exactly alike. "They might be identical in size and physical characteristics, but each parcel has a unique location and is likely to differ from other parcels in some way. Typical differences requiring adjustments are in time of sale, location, and physical characteristics. *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 76.

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). Mere assertions that the assessed value of the subject property is wrong and that the assessed values of "comparable" properties are right does not satisfy the burden imposed on the complaining taxpayer.

The market value of real property usually changes from year to year. Changes made to the property since the last assessment will usually affect market value. Occasionally, the prior assessed value may be shown to be incorrect. The prior year's assessed value is therefore not relevant evidence of actual or fair market value in a subsequent year. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988). If the base calculation of a percentage change is not relevant evidence then any calculation based on it cannot be relevant evidence. The percentage change in assessed value from year to year is therefore not relevant evidence that the current assessed value is incorrect and either unreasonable or arbitrary.

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 statutory measure of actual value is not what an individual buyer may be willing to pay for the property, but rather its market value in the ordinary course of trade. *US Ecology, supra*.
6. The Commission lacks jurisdiction over issues not raised before the County Board of Equalization. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb.App. 499, 505, 583 N.W.2D 353, 357 (1998).
7. The Taxpayers have failed to adduce clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Board's decision must accordingly be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Dixon County Board of Equalization's Order setting the subject property's 2004 assessed value is affirmed.
2. The Taxpayers' real property legally described as the N $\frac{1}{2}$ NW $\frac{1}{4}$ & N $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 5, Township 28, Range 5, Dixon County,

Nebraska, shall be valued as follows for tax year 2004 as determined by the Board:

Land	\$95,335
Improvements	\$ -0-
Total	\$95,335

3. Any request for relief by any Party not specifically granted by this Order is denied.
4. This decision, if no appeal is filed, shall be certified to the Dixon County Treasurer, and the Dixon County Assessor, pursuant to Neb. Rev. Stat. §77-5016(9) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).
5. This decision shall only be applicable to tax year 2004.
6. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

I certify that I made and entered the above and foregoing Findings and Orders in this appeal on the 2nd day of November, 2005. The same were approved and confirmed by Commissioners Hans and Reynolds 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 3rd day of November, 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.