

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

THREE PARKS, LLC,)	
)	
Appellant,)	CASE NO. 05C-101, 05C-103
)	& 05C-104
vs.)	
)	FINDINGS AND ORDER
CASS COUNTY BOARD OF)	REVERSING THE DECISION OF THE
EQUALIZATION,)	CASS COUNTY BOARD OF
)	EQUALIZATION
Appellee.)	

The above-captioned cases were called for a hearing on the merits of appeals by Three Parks, LLC, to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on February 23, 2006, pursuant to a Notice and Order for Hearing issued December 12, 2005. Commissioners Lore, Hans and Warnes were present. Commissioner Warnes presided at the hearing.

Duane Menke, Managing Member of Three Parks, LLC, appeared at the hearing on behalf of Three Parks, LLC ("the Taxpayer") without counsel.

The Cass County Board of Equalization ("the County Board") appeared through counsel, Nathan Cox, Esq., the Cass County Attorney.

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

The Commission is required by Neb. Rev. Stat. §77-5018 (Supp. 2005) to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case is as follows.

I. STANDARD OF REVIEW

The Taxpayer, in order to prevail, is required to demonstrate that the decision of the County Board was incorrect and arbitrary or unreasonable. Neb. Rev. Stat. §77-5016(8)(Supp. 2005). The presumption created by the statute can be overcome if the Taxpayer shows by clear and convincing evidence that the County Board either failed to faithfully perform its official duties or that the County Board failed to act upon sufficient competent evidence in making its decision. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). It is the Taxpayer's burden to overcome the presumption with clear and convincing evidence of more than a difference of opinion. *Garvey Elevators, Inc v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the value as determined by the County Board was unreasonable. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

II. FINDINGS

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described in the appeals filed as Townsend's Add Lots 1 - 4 & 7 - 8 Blk 3 (.91) a/k/a Parcel 130006750, Outlots Lot 5 NW 1/4 SW 1/4 Section 7 - 12 - 14 (17.56) a/k/a Parcel 130167827, & Outlots Lots 8, 9, 20, 23, & 25 W2 SW4 Sec 7 - 12 - 14 (5.19) a/k/a Parcel 130003069, Cass County,

Nebraska d/b/a Hi - Vue Mobile Home Park, Cass County, Nebraska, (“the subject property”).

- 2. The parties had previously agreed to consolidate all three parcels for purpose of the informal hearing and approved on the record said consolidation in accordance with the Commission’s order of consolidation dated December 7, 2005. The subject properties appear below with their valuations.

Case No. 05C - 101

Subject Property Description: Townsend's Add Lots 1 - 4 & 7 - 8 Blk 3 (.91) a/k/a Parcel 130006750 (.91 acres)

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$29,813.00	\$500.00	\$29,813.00
Improvement	\$0.00	\$0.00	\$0.00
Total	\$29,813.00	\$500.00	\$29,813.00

Case No. 05C - 103

Subject Property Description: Outlots Lot 5 NW 1/4 SW 1/4 Section 7 - 12 - 14 (17.56) a/k/a Parcel 130167827 (17.56 acres)

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$167,256.00	\$135,000.00	\$167,256.00
Improvement	\$142,069.00	\$0.00	\$142,069.00
Total	\$309,325.00	\$135,000.00	\$309,325.00

Case No. 05C - 104

Subject Property Description: Outlots Lots 8, 9, 20, 23, & 25 W2 SW4 Sec 7 - 12 - 14 a/k/a
Parcel 130003069, (5.19 acres)

Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land \$44,150.00	\$2,500.00	\$44,150.00
Improvement 00.00	00.00	00.00
Total \$44,150.00	\$2,500.00	\$44,150.00

3. The Taxpayer timely protested the values stated in the Assessor's notice to the County Board. The Taxpayer proposed the values for each parcel of the subject property described in the appeals as shown in the table above.
4. County Board determined that the actual or fair market value of each parcel of the subject property described in the appeals as of the assessment date as shown in the table above.
5. The Taxpayer timely filed appeals of those decisions to the Commission.
6. The County Board was served with Notices in Lieu of Summons, and duly answered those Notices.
7. The Taxpayer's appeals were consolidated for hearing by order of the Commission.
8. An Order for Hearing and Notice of Hearing issued on December 12, 2005, set a hearing of the Taxpayer's appeals for February 23, 2006, at 9:00 A.M. CST.
9. 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.

10. The Taxpayer has adduced sufficient, clear and convincing evidence to overcome the presumption in favor of the County Board and has met its burden of proof.
11. Based on the entire record before it, the Commission finds and determines that the actual or fair market value of each parcel of the subject property described in the case files for the tax year 2005 is:

Case No. 05C-101

Land value	\$8,330
Total value	<u>\$8,330</u>

Case No. 05C-103

Land value	\$160,631
Improvements	\$142,069
Total value	<u>\$302,700</u>

Case No. 05C-104

Land value	\$31,651
Total value	<u>\$31,651</u>

12. The decisions of the County Board should be reversed.

III. CONCLUSIONS OF LAW

1. Subject matter jurisdiction of the Commission is over all issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998)
2. The Commission has jurisdiction over the parties and the subject matter of this appeal.
3. The Commission, while making a decision, may not consider testimony, records, documents or other evidence which is not a part of the hearing record except those identified in the Commission's rules and regulations or Section 77-5016 (3). Neb. Rev. Stat. §77-5016 (3) (Supp 2005).
4. 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) (Cum. Supp. 2004).
5. “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 2003).
6. Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Neb. Rev. Stat. §77-112 (Reissue 2003).

7. “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).
8. 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 2003).
9. The Taxpayer must adduce evidence establishing that the action of the County Board was incorrect and unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005). The Nebraska Supreme Court, in considering similar language, has held that “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. That 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.” *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523, (2001).
10. 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).

11. 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).
12. The Court has also held that “In an appeal to the county board of equalization or to [the Tax Equalization and Review Commission] and from the [Commission] to this court, 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.” *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523, (2001).
13. "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).
14. “It is the function of the county board of equalization to determine the actual value of locally assessed property for tax purposes. In carrying out this function, the county board must give effect to the constitutional requirement that taxes be levied uniformly and proportionately upon all taxable property in the county. Individual discrepancies and inequalities within the county must be corrected and equalized by the county board of equalization.” *AT & T Information Systems, Inc. v. State Bd. of Equalization and Assessment*, 237 Neb. 591, 595, 467 N.W.2d 55, 58, (1991).

15. “It is well established that the value of the opinion of an expert witness is no stronger than the facts upon which it is based.” *Bottorf v. Clay County Bd. Of Equalization*, 7 Neb. App. 162, 167, 580 N.W.2d 561, 565, (1998).
16. “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).
17. The appraisal of real estate is not an exact science. *Matter of Bock’s Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874, (1977).

IV. DISCUSSION

The subject property consists of three parcels of land comprising one commercial entity known as Hi - Vue Mobile Home Park (“Mobile Home Park”). It is located in Plattsmouth, Cass County, Nebraska.

Parcel one consists of .91 acres and was unimproved. It was characterized by the owner as consisting of a drainage ditch which is “absolutely worthless land”. Tract one was valued by the County at \$29,813.

Parcel two is 17.56 acres in size and contains some 71 mobile home lots with improvements. The land was valued by the County at \$167,256. The valuation of the improvements was \$142,069 but the taxpayer does not object to this valuation and it will not be considered as a part of this decision.

The third parcel of ground consists of 5.19 acres. Testimony was unclear whether any trailers sit on this parcel of ground, however, the taxpayer thought there were five lots. The

county's records did not show any improvements and thus there is not an issue of valuation of improvements.

Testimony from the Taxpayer confirmed that he did not object to the total value placed on the three tracts of land of the Mobile Home Park by the Cass County Board of Equalization. This value was \$241,219 for only the land. His objection was as to the apportionment of the total value placed on each of the three parcels of property which make up the Mobile Home Park. His testimony revealed that he did not know how the values were derived for each parcel.

The Taxpayer testified that he bought the Mobile Home Park in 2000. All three parcels of land were included in the sale and the land has remained together as part of the commercial entity known as Hi - Vue Mobile Home Park. There are no fences or other demarcations separating the three tracts from each other.

The County's appraiser testified that this property was treated as one commercial property for purposes of valuation.

Testimony revealed that income and expense figures had been provided by the Taxpayer to the County and a valuation by the Income Approach was derived which exceeded the valuation derived using the Market Approach.

Both parties agreed that the Market Approach was the preferred valuation method for the subject property.

The county's appraiser testified that the land was valued using the Neighborhood Land Table as shown in Exhibit 6. All three parcels of ground were considered as one by the County Board for the purposes of valuing the land. This required that the "breaks" in size be applied to the property as a whole to be distinguished from starting over with each parcel which would have

resulted in a higher land valuation. This approach was acknowledged by both parties as being to the advantage of the Taxpayer.

After a careful review of the factors used to calculate the land valuations it appears to the Commission that the calculations used by the County are not accurate. The County relies on its exhibits 5:10, 5:3, and 5:13 in making its calculations. Testimony confirmed that the county did not use the per sq. ft. figures shown on these exhibits to make its calculation. These exhibits give information critical to the calculation expressed. From the exhibits, one can determine the actual area of land involved for each parcel, the neighborhood/market area and the factor number used to adjust for size and topography. This information is used in conjunction with Exhibit 6 to calculate a value. A table of these variables as taken from the above exhibits is shown below.

Case No	05C-101 (.91AC)	05C-103 (17.56 AC)	05C-104 (5.19AC)		
Square feet	39,668	764,913	226,076	Total	1,030,657
Unit Value	.75 (E5:9&10)	.22 (E5:4&5)	.20 (E5:13&14)		
Shown on Exhibits	\$29,813	\$167,256	\$44,150	Total	\$241,219
When Multiplied	\$29,751	\$168,280	\$45,215	Total	\$243,246
				Difference	\$2,027

The difference in calculations necessitates further analysis. The inaccuracies in calculations are of secondary concern since it is obvious that some other basis of calculation was used since none of the per unit values utilized are shown in Exhibit 6 as testified.

Turning to exhibit 6 the following analysis is made using the total square footage of the subject property as shown in the table above (1,030,657 sq. ft.) and following the methodology given in the testimony of the county's appraiser.

$$1\text{st } 10,000 \text{ square feet} \times \$1.75/\text{square foot} = \$ 17,500$$

$$\text{next } 33,560 \text{ square feet} \times \$.75/\text{square foot} = \$ 25,170$$

$$\text{balance of } 987,097/\text{square feet} \times .25 = \$246,774$$

$$\text{Total Value: } \$289,444$$

An average value per each square foot can be calculated by dividing the above total value figure for the land by the total square footage of land: \$289,444 divided by 1,030,657 square feet = \$.28/square foot

The discount figures for each of the three parcels must now be applied. The discount for each factor is shown on exhibit 6. The factor for each parcel is shown on the same exhibits used to determine the square footage and value per unit, E:10, 5:3, and 5:13. The calculations using this method are shown in the table below.

Case No	05C-101 (.91AC)	05C-103 (17.56AC)	05C-104 (5.19AC)		
Square feet	39,668	764,913	226,076	Total	1,030,657
Value per Unit	.28	.28	.28		
Base Land Value	\$11,107	214,175	\$63,301		
SIZE & TOPO Factor	5(75%)	5(75%)	4(50%)		
Calculated Valuation	\$8,330	\$160,631	\$31,651	Total	\$200,612

The County's total valuation of \$241,219 is higher than that valuation calculated as shown, \$200,612.

The Commission believes that the valuation process utilized by the County to value the subject property as a whole is an acceptable valuation method. Reference is made to *Bumgarner v County of Valley*, 303 N.W. 2d 307, 208 Neb. 361 (Neb. 1981). The critical issue is the value of the entire property and not the proportion of that value which is allocated to each individual tract. However, in this case, the County's calculations when followed by its own directions results in different values than those provided to and approved by the County Board of Equalization. Accordingly, it is the finding and order of the Commission that the following valuations shall be used for each of the parcels as shown below for the tax year 2005.

Case No.	05C-101 (.91)	05C-103 (17.56)	05C - 104 (5.19)	
	\$8,330	\$160,631	\$31,651	Total \$200,612

V. ORDER

IT IS THEREFORE ORDERED:

1. That the decisions of the County Board determining the actual or fair market value of the subject property for tax year 2005 is vacated and reversed.
2. That the actual or fair market value of each parcel of the subject property described in the appeals as of the assessment date, January 1, 2005, as follows:

Case No.	05C - 101 (.91)	05C - 103 (17.56)	05C - 104 (5.19)
Land value	\$8,330	\$160,631	\$31,651
Improvements	<u>00.00</u>	<u>\$142,069</u>	<u>00.00</u>
Totals	<u>\$8,330</u>	<u>\$302,700</u>	<u>\$31,651</u>

3. That this decision, if no appeal is timely filed, shall be certified to the Cass County Treasurer, and the Cass County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Supp. 2005).
4. That any request for relief, by any party, which is not specifically provided for by this order is denied.
5. That each party is to bear its own costs in this matter.
6. That this decision shall only be applicable to tax year 2005.
7. This order is effective for purposes of appeal March 27, 2006.

Signed and Sealed. March 27, 2006.

Susan S. Lore, Commissioner

Robert L. Hans, Commissioner

William C. Warnes, Commissioner

SEAL

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 PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW CONTAINED IN NEB. REV. STAT. §77-5019 (SUPP. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.