

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

| | | |
|------------------------|---|------------------------------|
| RONALD E. RUNGE, |) | |
| |) | |
| Appellant, |) | Case No 05A-001 |
| |) | |
| v. |) | DECISION AND ORDER AFFIRMING |
| |) | THE DECISION OF THE DAKOTA |
| DAKOTA COUNTY BOARD OF |) | COUNTY BOARD OF EQUALIZATION |
| EQUALIZATION, |) | |
| |) | |
| Appellee. |) | |

The above-captioned case was called for a hearing on the merits of an appeal by Ronald E. Runge to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Holiday Inn Express, 920 S 20th Street, Norfolk, Nebraska, on September 12, 2006, pursuant to a Notice and Order for Hearing issued June 14, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Ronald E. Runge, ("the Taxpayer") was present at the hearing without legal counsel.

The Dakota County Board of Equalization ("the County Board") appeared through legal counsel, Edward H. Matney III, County Attorney for Dakota County, Nebraska.

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.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described as Part SE $\frac{1}{4}$ beginning at the NW corner of the SE $\frac{1}{4}$, thence E32.9', thence Southeast 3349.6' to a point on the East line of the said SE $\frac{1}{4}$, which point is 530.25' N of the SE corner of said SE $\frac{1}{4}$, thence S 530.25', thence West to the SW corner of said SE $\frac{1}{4}$, thence North to the point of beginning Section 27, Township 27, Range 9, Dakota County, Nebraska, ("the subject property").
2. Taxable value of the subject property placed on the assessment roll as of January 1, 2005, ("the assessment date") by the Dakota County Assessor, value as proposed by the Taxpayer in a timely protest, and taxable value as determined by the County Board is shown in the following table:

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Description: Part SE $\frac{1}{4}$ beginning at the NW corner of the SE $\frac{1}{4}$, thence E32.9', thence Southeast 3349.6' to a point on the East line of the said SE $\frac{1}{4}$, which point is 530.25' N of the SE corner of said SE $\frac{1}{4}$, thence S 530.25', thence West to the SW corner of said SE $\frac{1}{4}$, thence North to the point of beginning Section 27, Township 27, Range 9, Dakota County, Nebraska.

| | Assessor Notice Value | Taxpayer Protest Value | Board Determined Value |
|-------------------|-----------------------|------------------------|------------------------|
| Agricultural Land | \$35,805.00 | \$27,085.00 | \$35,805.00 |
| Total | \$35,805.00 | \$27,085.00 | \$35,805.00 |

3. The Taxpayer timely filed an appeal of the County Board's decision to the Commission.
4. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
5. An Order for Hearing and Notice of Hearing issued on June 14, 2006, set a hearing of the Taxpayer's appeal for September 12, 2006, at 2:00 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. Taxable value of the subject property for the tax year 2005 is:

Agricultural land \$35,805.00

Total \$35,805.00.

II. APPLICABLE LAW

1. “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).
2. 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).

3. Use of all of the statutory factors for determination of actual value is not required. All that is required is use of the applicable factors. *First National Bank & Trust of Syracuse v. Otoe Cty.*, 233 Neb. 412, 445 N.W.2d 880 (1989).
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 2003).
6. All taxable real property, with the exception of qualified agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004).
7. Qualified agricultural land and horticultural land shall be valued for purposes of taxation at eighty percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2003).
8. Qualified agricultural land and horticultural land means land which is primarily used for the production of agricultural or horticultural products, including wasteland lying in or adjacent to and in common ownership or management with land used for the production of agricultural or horticultural products. Land retained or protected for future agricultural or horticultural uses under a conservation easement as provided in the Conservation and Preservation Easements Act shall be defined as agricultural land or horticultural land. Land enrolled in a federal or state program in which payments are

received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land. Land that is zoned predominantly for purposes other than agricultural or horticultural use shall not be assessed as agricultural land or horticultural land. Neb. Rev. Stat. §77-1359 (1) (Reissue 2003).

9. Agricultural or horticultural products include grain and feed crops; forages and sod crops; animal production, including breeding, feeding, or grazing of cattle, horses, swine, sheep, goats, bees, or poultry; and fruits, vegetables, flowers, seeds, grasses, trees, timber, and other horticultural crops. Neb. Rev. Stat. §77-1359 (2) (Reissue 2003).
10. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
11. The presumption that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
12. 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) (citations omitted)

13. The Commission can grant relief only if the Taxpayer establishes by clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005).
14. "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).
15. 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).
16. 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).
17. "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).

III. DISCUSSION

The subject property is 100.64 acres of unimproved agricultural and horticultural land. The Taxpayer testified that it is overgrown with brush and trees and that it has a bluff. The Taxpayer testified that he did not have an opinion about actual value for the subject property as

of January 1, 2005, but thought the 2004 taxable value of \$27,085.00 was high but acceptable. The Taxpayer did not offer any other evidence of actual value or taxable value. The Taxpayer asserted in his protest that there was no basis for taxable value as determined by the Assessor. (E9:2). Taxable value as determined by the Assessor was adopted by the County Board. The Taxpayer asserts now that there was no basis for the County Board's decision. It is the Taxpayer's burden to make an initial showing that the decision of the County Board was incorrect and arbitrary or unreasonable. Neb. Rev. Stat. 77-5016(8). (Supp. 2005). The Taxpayer has not met that burden and the Commission cannot grant relief.

The Commission's order for hearing required the County Board to produce the property record file for the subject property. The property record file for the subject property submitted prior to the hearing pertained to the tax year 2006. (E8:1,2, and 3). The tax year at issue in the appeal is 2005. The Commission requested the property record file be submitted for the the 2005 tax year. In addition the Commission requested that the protest filed by the Taxpayer be submitted.

While the Commission waited for the County's compliance with its requests for production of documents the Taxpayer moved for an order directing the County Board to produce the property record file for the subject property within a time certain. The Taxpayer also moved for dismissal of the appeal in the event the County Board failed to produce the property record file for the subject property. The Commission construed the motion for dismissal to be a motion for relief as a sanction for failure to produce.

The County complied with the Commission's requests for production of documents. The produced documents were received in part over the Taxpayer's objection.

The Taxpayer's motion for an order setting a time limit on its request for production should be denied. The documents requested were produced at the hearing in a timely manner following the Commission's request.

The Taxpayer's motion for sanctions should be denied. Production of the protest form was necessary to show compliance with Neb. Rev. Stat. §77-1502. Compliance with that statute is necessary in order to confer jurisdiction on the County Board and thereafter on the Commission. Neb. Rev. Stat. §77-1502 (1) and (2) (Supp 2005 as amended by Neb. Laws 2006, LB 808 §37). Jurisdiction is not presumed. *Olsen v. Grosshans*, 160 Neb. 543, 71 N.W.2d 90 (1955), See, also, *Shambaugh v. Buffalo County*, 133 Neb. 46, 274 N.W. 207 (1937). Proof of jurisdiction is part of the Taxpayer's burden. *See. Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 583 N.W. 353, (1998). The Taxpayer had not produced the required document. Without the document the Commission did not have proof of jurisdiction. The Taxpayer cannot complain because the Commission caused the County to produce at the hearing a document necessary for proof of jurisdiction.

The Taxpayer objected to receipt of the property record file for the subject property as of the tax year 2005 after it was produced. The property record file for the tax year 2005 was not received. A sanction for failure to produce should not be imposed if the complaining party is not benefitted by production.

IV CONCLUSIONS OF LAW

1 The Commission has subject matter jurisdiction in this appeal.

2. Subject matter jurisdiction of the Commission in this appeal 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).
3. The Commission has jurisdiction over the parties to this appeal.
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.

**V.
ORDER**

IT IS THEREFORE ORDERED THAT:

1. The decision of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2005, is affirmed.
2. The Taxpayer's motion to require delivery of the property record file by a time certain is denied.
3. The Taxpayer's motion for relief as a sanction for failure to comply with the Commission's order for hearing is denied.
4. Taxable value of the subject property for the tax year 2005 is:

Agricultural land \$35,805.00

Total \$35,805.00.

5. This decision, if no appeal is timely filed, shall be certified to the Dakota County Treasurer, and the Dakota County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Supp. 2005).
6. Any request for relief, by any party, which is not specifically provided for by this order is denied.
7. Each party is to bear its own costs in this proceeding.
8. This decision shall only be applicable to tax year 2005.
9. This order is effective for purposes of appeal September 18, 2006.

Signed and Sealed. September 18, 2006.

Wm. R. Wickersham, Commissioner

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.