

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

MARJORIE E. BARTELS,)	
)	Case No. 06A-018
Appellant,)	
)	DECISION AND ORDER AFFIRMING
v.)	THE DECISION OF THE JOHNSON
)	COUNTY BOARD OF EQUALIZATION
JOHNSON COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	
)	

The above-captioned case was called for a hearing on the merits of an appeal by Marjorie E. Bartels ("the Taxpayer") 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 March 23, 2007, pursuant to an Order for Hearing and Notice of Hearing issued December 6, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Warnes presided at the hearing.

Marjorie E. Bartels, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Richard R. Smith, a Deputy County Attorney for Johnson County, Nebraska, appeared as legal counsel for the Johnson County Board of Equalization ("the County Board").

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

The Commission is required by Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006) 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.
ISSUES**

The Taxpayer has asserted that actual value of the subject property as of January 1, 2006, is less than actual value as determined by the County Board. The issues on appeal related to that assertion are:

Was the decision of the County Board determining actual value of the subject property unreasonable or arbitrary?

What was actual value of the subject property on January 1, 2006?

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above captioned appeal to maintain the appeal.
2. The parcel of real property described below is the ("subject property").
3. Actual value of the subject property placed on the assessment roll as of January 1, 2006, ("the assessment date") by the Johnson County Assessor, value as proposed in a timely protest, and actual value as determined by the County Board is shown in the following table:

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Description: NE1/4 AND NW1/4 OF SECTION 20 TOWNSHIP 6 RANGE 9 (LESS TRS 11.36 A), Johnson County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$225,210.00	\$	\$216,210.00
Improvement	\$ 00.00	\$	\$ 00.00
Total	\$225,210.00	\$	\$216,210.00

4. An appeal of the County Board's decision was filed with the Commission.
5. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
6. An Amended Order for Hearing and Notice of Hearing issued on December 6, 2006, set a hearing of the appeal for March 23, 2007, at 9:00 a.m. CDST.
7. 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.
8. Actual value of the subject property as of the assessment date for the tax year 2006 is:

Land value	\$216,210.00
Improvement value	<u>\$ 00.00</u>
Total value	<u>\$216,210.00.</u>

**III.
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in this appeal is over 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. “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).
3. 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).
4. 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).
5. “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).
6. 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).

7. 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. 2006).
8. 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).
9. 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).
10. 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)
11. The Commission can grant relief only if there is clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005).

12. "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).
13. 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).
14. 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).
15. "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).

IV. ANALYSIS

This is an appeal of the valuation of the Taxpayer's agricultural land and horticultural land for 2006. The Taxpayer specifically believes that 24 acres of the subject property should be valued as wasteland at \$50/acre because it is a NRD pond. The Taxpayer does not dispute the value for the other land portion of the subject property contiguous to the pond.

The subject property was purchased by the Taxpayer in 1991. The NRD pond was on the parcel at the time of purchase and has continuously had water in it since then. The Johnson County Assessor testified that 2006 was the first year that this type of pooled water land was being valued as other than "wasteland". She testified that since 2000 she had noticed an

increase in the market value for land on which were pooled water which she characterised as watersheds. Examples of recent sales of land containing pooled water was shown on Exhibit 12:2 and 12:3. She made the decision to "bite the bullet" for 2006 and catch up to the values for watershed land which the market had shown. Thus, watersheds became a new subclass of property used in accordance with the allowance of the Rules and Regulations of the Department of Property Tax Administration, Title 350 Neb. Admin. Code, Chapter 14, § 004.09 (01/05), p. 12, Exhibit 10:1.

Wasteland is a land classification used in Johnson County, but is used only for the land along the Nemaha River and other deep ditches and minor side streams. The Assessor referred to those Rules and Regulations of the Department of Property Tax Administration. 350 Neb. Admin. Code, Chapter 14, § 005.01 (01/05), p.13, Exhibit 10:2. She testified that the subject property's NRD pond is not wasteland.

The initial valuation for 2006 is shown on Exhibit 11 in the amount of \$22,500 for the disputed 24 acres. This comes out to an average of \$937.50/acre. The County Assessor recommended this valuation based on a calculation that was based on the soil types associated with land on which the pond had been built.

Subsequent to the protest hearing the County Board lowered the valuation on the 24 acres to \$550/acre. After doing so, it established the same value for all other properties in Johnson County with the same condition, that of having "pooled water" greater than 7 acres. The basis of the County Boards reduction of valuation rested with the uncertainty concerning soil types that now exist under the pooled water due to the grading and silt from the watershed.

The County Board set the valuation based on Johnson County's lowest value per acre for grassland.

The Taxpayer testified that she should not be assessed more than the property could be sold for. The County Assessor testified that watershed land was selling as of January 1, 2007 for a minimum of \$1,000/acre. The Taxpayer had bid on an adjoining tract of 75 acres located adjacent to the watershed to \$150,000 before discontinuing her bid.

The Taxpayer contends that she cannot sell a portion of her land due to not having a permanent easement across the NRD property; however, it would appear that all of the subject property can be accessed.

The appeal of the Taxpayer is denied for the reasons stated above.

**V.
CONCLUSIONS OF LAW**

1. The Commission has subject matter jurisdiction in this appeal.
2. The Commission has jurisdiction over the parties to this appeal.
3. 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.

**VI.
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, 2006, is affirmed.

2. Actual value of the subject property for the tax year 2006 is:

Land value	\$216,210.00
Improvement value	\$ <u>00.00</u>
Total value	<u>\$216,210.00.</u>

3. This decision, if no appeal is timely filed, shall be certified to the Johnson County Treasurer, and the Johnson County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).

4. Any request for relief, by any party, which is not specifically provided for by this order is denied.

5. Each party is to bear its own costs in this proceeding.

6. This decision shall only be applicable to tax year 2006.

7. This order is effective for purposes of appeal March 30, 2007.

Signed and Sealed. March 30, 2007.

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 (CUM. SUPP. 2006). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.