

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

| | | |
|---------------------------------|---|------------------------------|
| ELAINE A. WENTZ, TRUSTEE of the |) | |
| DONALD E. & ELAINE A. WENTZ |) | |
| TRUST |) | Case No 06A-098 |
| |) | |
| Appellant, |) | DECISION AND ORDER AFFIRMING |
| |) | THE DECISION OF THE JOHNSON |
| v. |) | 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 Elaine A. Wentz ("the Taxpayer"), Trustee of the Donald E. and Elaine A. Wentz Trust, 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.

Elaine A. Wentz, Trustee of the Donald E. and Elaine A. Wentz Trust 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: W1/2NW1/4 & NE1/4NW1/4 SECTION 7, TOWNSHIP 6, RANGE 9,
JOHNSON COUNTY (117.07 AC), Johnson County, Nebraska.

| | Assessor Notice Value | Taxpayer Protest Value | Board Determined Value |
|-------------|-----------------------|------------------------|------------------------|
| Land | \$141,100.00 | \$111,860.00 | \$141,100.00 |
| Improvement | \$ 00.00 | \$ 00.00 | \$ 00.00 |
| Total | \$141,000.00 | \$111,860.00 | \$141,100.00 |

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 11:00 a.m. CST.
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 \$141,100.00
Improvement value \$ 00.00
Total value \$141,000.00.

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 appeal is regarding the valuation of agricultural land and horticultural land near Sterling, in Johnson County, Nebraska. In particular, the Taxpayer believes that 17.93 acres of the subject property should be valued as wasteland.

The Taxpayer testified that the 17.93 acres of the subject property is the product of WPA work in the 1930's and 1940's. The land in question consists of three small dams in the southwest corner of the property, tree cover with hardwoods and cedars along with grasses in the same general area. There are other areas on the farm with a large ditch and a pond area that had been partially restored. A complete description of the Taxpayer's suggested wasteland

areas can be found described in Exhibit 2. A good demonstrative pictorial of the claimed wasteland area can be seen on Exhibit 5:1. The contested areas are outlined in yellow.

The Taxpayer testified that the land area in question cannot be farmed and is not fenced off for pasturing since it would be cost prohibitive.

The total area alleged by the Taxpayer to be wasteland was determined by subtracting from the total farm acreage of 117.07 the land planted, (71.64 acres, less the land in CRP, (9.9 acres) and 13.6 acres), less 4 acres for roads leaving a balance of 17.93 acres (Exhibit 4:1 and Exhibit 6:3). The exact number of acres involved in this appeal is not necessary for the Commission's analysis as shown below.

The Taxpayer called the Johnson County Assessor to testify. The Assessor testified that the subject property was agricultural land and horticultural land and has been assessed on the same basis for both the Taxpayer and all other agricultural land and horticultural land in Johnson County. The method used for assessing agricultural land and horticultural land uses the soil type, land use and Land Valuation Group (LVG). The Assessor valued each soil type using various LVGs to account for land with tree cover and non productive agricultural land and horticultural land. The valuation of each acre of the Taxpayer's farm as determined by the Assessor is shown on Exhibit 3:1.

The Commission finds that the valuation method of the Johnson County Assessor adopted by the County Board as applied to the subject property is not arbitrary or unreasonable and is equalized throughout the county.

The definition of wasteland is found in the Rules and Regulations of the Department of the Property Tax Administrator at 442 Administrative Code, Chapter 14, § 002.05. The definition reads as follows.

“‘Wasteland’ includes those land types that cannot be used economically and are not suitable for recreational or agricultural use or production. Such land types include but are not limited to, blowouts, riverwash (recent unstabilized alluvial deposits), marshes, badlands, large deep gullies (including streambeds and banks), bluffs, rockland, gravel areas, and salt flats. To qualify for wasteland the land must be lying in or adjacent to and in common ownership or management with land used for the production of agricultural products. Some of these areas could be developed or reclaimed for some beneficial use by land shaping, revegetation, drainage, or possibly other special practices. Until they are reclaimed, developed, or restored to agricultural production or recreational use, they should be classified as wasteland. Other land types which may be classified as wasteland are the permanent easement acres associated with the Bureau of Reclamation or irrigation districts. These areas are defined as open canals or ditches, laterals, drains, and service roads for the canal system. Assessors need to verify or be aware of the type of deed or easement that may be filed for these areas before making any determination of classification.”

From the Commission’s reading of this definition the Commission finds that the land in question on the subject property is not wasteland. The appeal of the Taxpayer is denied.

**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 | \$141,100.00 |
| Improvement value | <u>\$ 00.00</u> |
| Total value | <u>\$141,000.00</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.