

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

REUBEN HOFF JR.,)	
)	
Appellant,)	Case No 06R-282
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE RED WILLOW
RED WILLOW 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 Reuben Hoff Jr. ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held at the Hampton Inn, 200 Platte Oasis Parkway, North Platte, Nebraska, on August 22, 2007, pursuant to an Order for Hearing and Notice of Hearing issued April 16, 2007. Commissioners Wickersham, Warnes, and Salmon were present. Commissioner Warnes presided at the hearing.

Reuben Hoff Jr., was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Philip P. Lyons, a Deputy County Attorney for Red Willow County, Nebraska, appeared as legal counsel for the Red Willow 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:

Whether the decision of the County Board determining actual value of the subject property is unreasonable or arbitrary; and

The 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 to which this appeal pertains is described in the table below ("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 Red Willow County Assessor, value as proposed in a timely protest, and actual value as determined by the County Board is shown in the following table:

Case No. 06R-282

Description: BOX ELDER PRECINCT 12-4-29 PT SE/4 SE/4 (20.35 Acres), Red Willow County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 9,219.00	\$ 9,219.00	\$ 9,219.00
Improvement	\$129,466.00	\$116,883.00	\$129,466.00
Total	\$138,685.00	\$126,102.00	\$138,685.00

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 Order for Hearing and Notice of Hearing issued on April 16, 2007, set a hearing of the appeal for August 22, 2007, at 10:00 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	\$ 9,219.00
Improvement value	<u>\$129,466.00</u>
Total value	<u>\$138,685.00.</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 (8) (Cum. Supp. 2006), and e.g. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
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).
16. The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998).

17. A Taxpayer, who only produced evidence that was aimed at discrediting valuation methods utilized by county assessor, failed to meet burden of proving that value of property was not fairly and proportionately equalized or that valuation placed upon property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).
18. Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981).

IV. ANALYSIS

Taxpayer presents this appeal of the actual value of the subject property for the tax year 2006. The subject property consists of 20.35 acres of land with improvements that include a house, detached garage, two sheds and three outbuildings. Exhibits 9:9 and 9:10

The main contention of the Taxpayer is that he believes that the actual value of the subject property should be decreased for 2006 due to its proximity to two large dairy farms. Exhibit 2:1, shows the location of the subject property and the dairy farms. One of the dairy farms had received a special use permit to use the pivot located directly north of the subject property for de-watering its anaerobic ponds. The Taxpayer believes this will increase the odor problem and make it more difficult to sell the subject property.

The Taxpayer provided the property record cards, Exhibits 3 to 7, for five of the County's parcels offered as comparable properties cited by the County in Exhibit 10. These

properties sold between January 15, 2004, and March 15, 2006. The location of the parcels described in Exhibits 3 to 7 were shown on the map provided by the Taxpayer, Exhibit 2:1. The parcels shown in Exhibits 3 to 7 are all over a mile away from the subject property. The Taxpayer testified that the parcels described in Exhibits 3 to 7 were not comparable to the subject property because of the distance from the offensive dairy farm. No evidence was provided by the Taxpayer of sales of properties that were negatively affected by the proximity to the dairies. The Commission cannot speculate as to what a future buyer of the subject property might think about its nearness to the dairies or what future effect the operation of the pivot irrigation for aeration of an anaerobic pond might have on such a sale.

The Taxpayer stated that his opinion of value of fair market value on January 1, 2006, was \$140,000. The Commission notes that the County assessment of actual value for the subject property for the year 2006 was \$138,685.

The Taxpayer has not shown by clear and convincing evidence that the decision of the County Board was unreasonable or arbitrary. The Taxpayer's appeal 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 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	\$ 9,219.00
Improvement value	<u>\$129,466.00</u>
Total value	<u><u>\$138,685.00.</u></u>
3. This decision, if no appeal is timely filed, shall be certified to the Red Willow County Treasurer, and the Red Willow 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 on September 28, 2007.

Signed and Sealed. September 28, 2007.

Wm. R. Wickersham, Commissioner

Nancy J. Salmon, 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.