

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

L & H INVESTMENTS, PARTNERSHIP)	
)	
Appellant,)	Case No. 08R 769
)	
v.)	DECISION AND ORDER
)	AFFIRMING THE DECISION OF
NEMAHA COUNTY BOARD OF)	THE NEMAHA COUNTY BOARD OF
EQUALIZATION,)	EQUALIZATION
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by L & H Investments, Partnership ("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 July 24, 2009, pursuant to an Order for Hearing and Notice of Hearing issued May 19, 2009.

Commissioners Warnes and Salmon were present. Commissioner Warnes was the presiding hearing officer. Commissioner Wickersham was excused from participation by the presiding hearing officer. Commissioner Hotz was absent. The appeal was heard by a quorum of a panel of the Commission.

Harry A. Larson, Partner of L & H Investments, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Angelo M. Ligouri, County Attorney for Nemaha County, Nebraska, was present as legal counsel for the Nemaha County Board of Equalization ("the County Board").

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

The Commission is required to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-

5018 (Cum. Supp. 2008). 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, 2008, 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, 2008.

**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 ("the Subject Property") is described in the table below.
3. Actual value of the subject property placed on the assessment roll as of January 1, 2008, ("the assessment date") by the Nemaha County Assessor, value as proposed in a timely protest, and actual value as determined by the County Board is shown in the following table:

Description: SEC 36-6-15 6.98 AC - TRACT 1 - THAT PART OF NE 1/4 SW 1/4 LYING W OF CO RD ROW, Nemaha County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$2,815.00	1\$1,396.00	\$2,815.00
Improvement	\$0	\$0.00	\$0.00
Total	\$\$2,815.00	1\$1,396.00	\$2,815.00

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 May 19, 2009, set a hearing of the appeal for July 24, 2009, 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 2008 is:

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Land value \$\$2,815.00

Improvement value \$0

Total value \$\$2,815.00.

**III.
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in this appeal is over all questions necessary to determine taxable value. Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2008).

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. “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 agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2008).

7. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *City of York v. York County Bd. Of Equalization*, 266 Neb. 297, 64 N.W.2d 445 (2003).
8. 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).
9. The presumption disappears if there is competent evidence to the contrary. *Id.*
10. The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2006).
11. Proof that the order, decision, determination, or action appealed from was unreasonable or arbitrary must be made by clear and convincing evidence. See, 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. A corporate officer or other representative of an entity, must be shown to be familiar with the property in question and have a knowledge of values generally in the vicinity to be qualified to offer an opinion of value. *Kohl's Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb.App. 809, 638 N.W.2d, 881 (2002).
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, 580 N.W.2d 561 (1998).
17. A Taxpayer, who only produced evidence that was aimed at discrediting valuation methods utilized by the 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. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965).

IV. ANALYSIS

The subject property is a 6.98 acre unimproved parcel which is a strip of land approximately ½ mile long and 50 yards wide. The subject property abuts and is contiguous to the Taxpayer's 80 acres of agricultural land to the east.

The Taxpayer testified that the subject property is tree covered and not useable for agricultural and/or horticultural purposes and no agricultural or horticultural products were commercially produced on the subject property prior to January 1, 2008. The Taxpayer testified that his primary purpose for obtaining the subject property was because it abutted his land to the west. The Taxpayer testified that he purchased the subject property in a 1031 Land Exchange. The current market value of the subject property at the time of the exchange was shown on the Form 521, signed and filed by the Taxpayer as \$3,856. (E4:1). The Taxpayer testified that the basis for his belief that the subject property was worth this amount was it was the value assessed by the County Assessor on the parcel that was traded for by the Taxpayer.

The County valued the subject property as agricultural or horticultural land and used \$4,000 as the purchase price paid by the Taxpayer. (E1:1) The County valued the subject property as agricultural land using the soil types of the land to calculate the 2008 assessed valuation of \$2,815. (E3:2). The County determined that this assessed valuation as compared to the purchase price of \$4,000 was equal to 70.38% of the market value of the subject property. (E1:1). Using \$2,815 the subject property has been assessed at a valuation of \$403 per acre.

The County Assessor wrote on the Form 422 that the 2008 assessed valuation of \$2,815 for the subject property is 70.38% of its market value. (E1:1). The County Assessor further

wrote that the "State requires that values be between 69% to 75 % of purchase price ...". (E1:1).

The Commission notes that this language written by the County Assessor on the Form 422 comes from Nebraska Statute 77-5023 (2007) and is language applicable to a class or subclass of properties for equalization purposes and not for a single parcel.

The Commission finds that the subject property is not properly classified as agricultural or horticultural since no agricultural or horticultural product was produced by the Taxpayer prior to January 1, 2008. The statutory definition of agricultural land and horticultural land contains various terms which are critical to an understanding of the statute. Neb. Rev. Stat. §77-132 (Cum. Supp. 2006).

"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 adduced on appeal to the contrary. From that point forward, 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." *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb.App. 688, 696, 584 N.W.2d 837, 842 - 843 (1998).

The Commission finds that the Taxpayer has rebutted the presumption by competent evidence and has shown by clear and convincing evidence that the County Board was arbitrary or unreasonable. This finding rests principally on the Commission's finding that the County Board

utilized an opinion of market valuation based on an incorrect land classification of the subject property and an incorrect statement of Nebraska law regarding its determination of actual value.

The Commission having found that the Taxpayer has rebutted the presumption and has shown by clear and convincing evidence that the County Board was arbitrary or unreasonable, must still determine from the reasonableness of the evidence if a new valuation was proven by the Taxpayer.

No sales of comparable parcels of land were provided by the Taxpayer.

The Taxpayer alleges that the subject property should be classified as “wasteland” in accordance with the definition found in Reg 14-002.55 of Title 350, Nebraska Department of property Assessment and Taxation, Chapter 14. The Taxpayer testified that the land should be classified as wasteland because it was inaccessible, did not have electricity, the topography was steep and there was no road access. The Taxpayer did not provide competent evidence of what the assessed valuation of wasteland would be in Nemaha county.

He further testified that he owned the property to the west and south and so access was available to him over his own land. The Taxpayer testified that despite the difficulty of reaching the subject property, he does hunt on it. The Commission is aware that there is another possible land classification for the subject property and that is as “recreational” land. The definition of recreational shall mean “all parcels of real property predominately used or intended to be used for diversion, entertainment, and relaxation on an occasional basis. Some of the uses would include fishing, hunting, camping, boating, hiking, picnicking, and the access or view that simply allows relaxation, diversion and entertainment.” (Need cite for Regulation in place for 2008 - current regulation in Assessor’s manual is for effective date 3/15/ 2009) There was no evidence provided

to the Commission as to what the assessed valuation for recreational land would be in Nemaha county for 2008, but there is the likelihood that its valuation would be greater than for agricultural classified land.

The Commission finds from the reasonableness of all of the evidence provided that the Taxpayer has not provided sufficient competent evidence which would show that relief should be granted for a new valuation of the subject property for 2008. 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 produced competent evidence that the County Board failed to faithfully perform its official duties and to act on sufficient competent evidence to justify its actions.
4. The Taxpayer has adduced sufficient, clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary, but has not shown by the reasonableness of all of the evidence presented sufficient competent evidence that relief should be granted and a new valuation ordered and so the decision of the County Board should be affirmed.

**VI.
ORDER**

IT IS ORDERED THAT:

- 1. The decision of the County Board determining actual value of the subject property as of the assessment date, January 1, 2008, is affirmed.
- 2. Actual value, for the tax year 2008, of the subject property is:

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Land value	\$2,815.00
Improvement value	\$ <u> -0- </u>
Total value	<u>\$2,815.00.</u>

- 3. This decision, if no appeal is timely filed, shall be certified to the Nemaha County Treasurer, and the Nemaha County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2008).
 - 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 2008.
 - 7. This order is effective for purposes of appeal on September 3, 2009.
- Signed and Sealed. September 3, 2009.

Nancy J. Salmon, Commissioner

William C. Warnes, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.