

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

KEVIN R. HOPP,)	
)	
Appellant,)	Case No. 09SV 002
)	
v.)	DECISION AND ORDER
)	DENYING RELIEF
SARPY COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Kevin R. Hopp ("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 January 10, 2011, pursuant to an Order for Hearing and Notice of Hearing issued October 29, 2010. Commissioner Wickersham, Chairperson of the Commission, was the presiding hearing officer. Commissioner Warnes was absent. Commissioner Wickersham, as Chairperson, designated Commissioners Wickersham, Salmon, and Hotz as a panel of the Commission to hear the appeal. Commissioner Salmon was excused. Commissioner Hotz was present. The appeal was heard by a quorum of a panel of the Commission.

Kevin R. Hopp was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Kerry A. Schmid, a Deputy County Attorney for Sarpy County, Nebraska, was present as legal counsel for the Sarpy 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 (Reissue 2009). The final decision and order of the Commission in this case is as follows.

**I.
ISSUES**

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2009, is less than taxable value as determined by the County Board. The issues on appeal related to that assertion are:

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

The taxable value of the subject property on January 1, 2009.

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2009, is not equalized with the taxable value of other real property. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining the equalized taxable value of the subject property is unreasonable or arbitrary;

Whether the equalized taxable value of the subject property was determined by the County Board in a manner and an amount that is uniform and proportionate as required by Nebraska's Constitution in Article VIII §1; and

The equalized taxable value of the subject property on January 1, 2009.

**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. Taxable value of the subject property placed on the assessment roll as of January 1, 2009, ("the assessment date") by the Sarpy County Assessor, value as proposed in a timely protest, and taxable value as determined by the County Board is shown in the following table:

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Description: Tax Lot 9B Section 19, Township 13, Range 13 and Tax Lot 11 Section 13, Township 12, Range 12 (21.74 Acres), Sarpy County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$23,424.00	\$25,000.00	\$23,424.00
Home Site	\$82,000.00	In Ag Land	\$71,000.00
Residence	\$729,950.00	\$600,000.00	\$729,950.00
Total	\$853,374.00	\$625,000.00	\$824,374.00

4. An appeal of the County Board's decision was filed with the Commission.
5. An Order for Hearing and Notice of Hearing issued on October 29, 2010, set a hearing of the appeal for January 10, 2011, at 9:00 a.m. CST.

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

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) (Reissue 2009).
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 2009).
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 2009).
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 2009).
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) (Reissue 2009).
7. “Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.” Neb. Const., Art. VIII, §1.
8. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).
9. The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).
10. Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property. *See Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).
11. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show

- uniformity. *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).
12. Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value. *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).
 13. The constitutional requirement of uniformity in taxation extends to both rate and valuation. *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).
 14. In the evaluation of real property for tax purposes, where buildings and improvements are taxable as a part of the real estate, the critical issue is the actual value of the entire property, not the proportion of that value which is allocated to the land or to the buildings and improvements by the appraiser. *Bumgarner v. Valley County*, 208 Neb. 361, 303 N.W.2d 307 (1981).
 15. If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgement. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity. *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).

16. The Legislature may enact laws to provide that the value of land actively devoted to agricultural or horticultural use shall for property tax purposes be that value which such land has for agricultural or horticultural use without regard to any value which such land might have for other purposes or uses. Neb. Const. art. VIII, §1 (5).
17. Agricultural or horticultural land which has an actual value as defined in section 77-112 reflecting purposes or uses other than agricultural or horticultural purposes or uses shall be assessed as provided in subsection (3) of section 77-201 if the land meets the qualifications of this subsection and an application for such special valuation is filed and approved pursuant to section 77-1345. In order for the land to qualify for special valuation all of the following criteria shall be met: (a) The land is located outside the corporate boundaries of any sanitary and improvement district, city, or village except as provided in subsection (2) of this section; and (b) the land is agricultural or horticultural land. Neb. Rev. Stat. §77-1344 (1) (Reissue 2009).
18. Agricultural land and horticultural land actively devoted to agricultural or horticultural purposes which has value for purposes other than agricultural or horticultural uses and which meets the qualifications for special valuation under section 77-1344 shall constitute a separate and distinct class of property for taxation, shall be subject to taxation, and shall be valued for taxation at seventy-five percent of its special value as defined in section 77-1343. Neb. Rev. Stat. §77-201 (3) (Reissue 2009).
19. Special value is the value land would have for agricultural or horticultural purposes or uses without regard to the actual value the land would have for other purposes. Neb. Rev. Stat. §77-1343 (5) (Reissue 2009).

20. Agricultural land and horticultural land qualified for special valuation is assessed a 75% of its special value. Neb. Rev. Stat. §77-201 (3) (Reissue 2009).
21. 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).
22. 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).
23. The presumption disappears if there is competent evidence to the contrary. *Id.*
24. 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) (Reissue 2009).
25. 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).
26. "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).

27. 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).
28. 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).
29. "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).
30. 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).
31. 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).
32. 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. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981); *Arenson v. Cedar County*, 212 Neb. 62, 321 N.W.2d 427 (1982)(determination

of equalized taxable value); *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value).

33. The commission shall deny relief to the appellant or petitioner in any hearing or proceeding unless a majority of the commissioners present determine that relief should be granted. Neb. Rev. Stat. §77-5016(12) (Reissue 2009).

IV. ANALYSIS

The subject property is an improved parcel in rural Sarpy County, Nebraska. The sole improvement on the parcel is a 5,826 square foot single family residence with a 3,476 square foot basement and a 1,366 square foot built in garage. (E8:3).

The Taxpayer contends that he was denied due process because the County failed to notify him that some portion of the subject property would have its contribution to value determined as site rather than agricultural land and horticultural land. Section 77-1314 of Nebraska Statutes requires a County Assessor to notify the owner of record if the assessed value of an item of real property will be assessed in the current year at an amount different than the prior year. The notice is required to state the item of real property and state the old and new valuation, the date of convening of the county board of equalization, the dates for filing a protest and the average level of value of all classes and subclasses of real property in the county as determined by the Tax Equalization and Review Commission. Neb. Rev. Stat. §77-1315(2) (Reissue 2009). There is no evidence that the requirements of statute were not complied with. There is no basis for finding that the county has a higher notice burden than stated in section 77-

1315 of Nebraska Statutes. In addition, even if the Taxpayer had not received proper notice of the change in value, by protesting any objection derived from insufficient notice was waived.

Gamboni v. County of Otoe, 159 Neb. 417, 67 N.W.2d 489 (1954).

The Taxpayer asserted that the increase in assessed valuation of the subject property over the prior year was excessive. A prior year's assessment is not relevant to the subsequent year's valuation. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944); *Affiliated Foods Coop v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 428 N.W.2d 201 (1988).

The Taxpayer asserted that the contribution to value of the portion of the subject property deemed to be agricultural land and horticultural land was not equalized with other parcels. The subject property contains 21.74 acres. (E8:4). Three acres of the subject property was classified as site. (E8:4). The balance of the parcel, 18.74 acres was classified and assessed as agricultural and horticultural at its special value. Property record files for parcels containing agricultural land and horticultural land assessed at special value were received as Exhibits 21, 22, and 26. Those exhibits show use of the same process for determining the contribution to value of the agricultural land and horticultural land classification based on soil type and then use with a value assigned to each acre of an LVG. There is no evidence that the process used to determine the contribution to value of the agricultural land and horticultural land assessed as special value as a component of the taxable value of the subject property was not determined uniformly with other parcels and is therefore equalized.

The Taxpayer asserted that the contribution to value made by the residence was not equalized with the contributions to value made by improvements on other parcels. An appraiser employed by the County Assessor ("appraiser") testified that the contribution to value made by

the residence was determined using the cost approach. The appraiser also testified that the same technique was used to determine the contribution to value made by all residential improvements in Sarpy County for tax year 2009. There is no evidence that the process used to determine the contribution to value of the residence was not determined uniformly with the contributions to value of the improvements on other parcels and is therefore equalized.

Taxpayer asserted that the contribution to value of the three acres of the subject property classified as site was excessive. The contribution to value of the three acres of the subject property classified as site had been determined by the County Assessor as \$82,000. (E10:3). The County Board determined that the contribution to value of the three acres classified as site was \$71,000. (E8:4). The Taxpayer did not offer an opinion of value for the parcel as a whole, or the contribution to value of the three acres classified as site. A Taxpayer, who only produces evidence that is aimed at discrediting valuation methods utilized by the county assessor, fails to meet the 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).

As a part of the argument that the contribution to value of the three acres classified as site was excessive the Taxpayer noted that Neb. Rev. Stat. §77-1359 (Reissue 2009) would allow only one acre of a parcel to be classified as a farm home site. If only one acre of the parcel could be classified as a farm home site then clearly the three acres classified as site did not comply with the statute. The statute also defines portions of a parcel that would be considered a farm site. Neb. Rev. Stat. §77-1359(4) (Reissue 2009). A farm site is the portion of the land with improvements that are agricultural or horticultural in nature, including any uninhabitable or

unimproved farm home site. *Id.* Only land that is contiguous to a farm site may be classified as a farm home site. Neb. Rev. Stat. §77-1359(3) (Reissue 2009). The sole improvement on the subject property is a residence. Clearly there is no farm site and there cannot therefore be a farm home site as defined by section 77-1359 of Nebraska Statutes. County assessors have the authority to classify lands for assessment. Neb. Rev. Stat. §77-1363 (Reissue 2009). The appraiser testified that any land with a improvements on it would be classified as site. Whether that is a farm home, farm site, or some other site is not material.

The subject property, as described in the Sarpy County assessment records for tax year 2009, contains lands owned by the Taxpayer in section 19, Township 13, Range 13 and Section 24, Township 13, Range 12. (E1 & E10:1) . The “parcel” as described in the County Assessor’s records contains lands in at least two different sections. Nebraska law requires an assessor to prepare an assessment roll each year. Neb. Rev. Stat. §77-1303 (Reissue 2009). The assessment roll lists each parcel, its owner, the number of acres or lots which comprise it and the value thereof, and the improvements and the value thereof. *Id.* A parcel is defined as “a contiguous tract of land determined by its boundaries under the same ownership, and in the same tax district and section. Parcel also means an improvement on leased land. If all or several lots in the same block are owned by the same person and contained in the same district, they may be included in one parcel.” Neb. Rev. Stat. §77-132 (Reissue 2009). Rules and Regulations promulgated by the Department of Revenue, Property Assessment Division, require that a parcel contain lands from only one section. *See* Title 350, Neb. Admin. Code, ch. 14 §002.57 (3/09). The assessment of lands from two different sections as one parcel is contrary to express statutory provisions.

Because the subject property, as described in the Sarpy County records, could not be lawfully assessed as a “parcel” the assessment is void.

As detailed below, Commissioner Hotz concludes that taxable value of the subject property was \$811,950.00. A majority of the panel does not agree or concur in a result. The Commission is required to deny relief unless a majority of the commissioners present determine that relief should be granted. Neb. Rev. Stat. §77-5016 (12) (Reissue 2009).

**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 commission may not grant relief because a majority of the panel has not agreed that relief should be granted. Neb. Rev. Stat. §77-5016 (12) (Reissue 2009).

**VI.
ORDER**

IT IS ORDERED THAT:

1. Relief is not granted.
2. Taxable value of the subject property, as determined by the County Board is unchanged:

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Agricultural Land	\$ 23,424.00
Farm Site	\$ 24,000.00
Home Site	\$ 47,000.00
Residence	\$729,950.00
Total	<u>\$824,374.00.</u>

3. This decision, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer, and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2009).
 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 2009.
 7. This order is effective for purposes of appeal on May 25, 2011.
- Signed and Sealed. May 25, 2011.

Wm. R. Wickersham, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (REISSUE 2009), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.

Commissioner Hotz, dissenting,

I respectfully dissent from the opinion of the presiding officer.

There is no disagreement that a single parcel, by definition, cannot contain land in two separate sections, even if the sections and the land are adjacent to one another. Neb. Rev. Stat.

Section 77-132 (Reissue 2009).¹ In this appeal, it is undisputed that both the County Assessor and the County Board incorrectly assessed and valued land in two adjacent sections as one parcel for purposes of taxation. On appeal, the County Board did not dispute that the County Assessor and the County Board should have assessed and valued this parcel without the addition of 3.51 acres that cannot be included as part of this parcel because the land is part of an adjoining section.² However, it does not follow that the assessment for the entire parcel should be voided.

The County Board valued the residential improvement associated with the parcel at \$729,950.³ Exhibit 3:1. The County Board also offered evidence of the value of the land associated with the parcel. However, a witness for the County Board, an appraiser employed by the County Assessor, testified that Exhibit 10:3 was in error, in that it included the 3.51 acres from the adjacent section. The appraiser also testified that the subject property, without the inclusion of the 3.51 acres in the adjacent section, consisted of 18.23 acres of land. The first three acres were described as non-agricultural site acres, with a total value of \$82,000.⁴

Exhibit 10:3, an “AGLAND INVENTORY REPORT”, shows the method used for the valuation of the agricultural acres, and includes the adjacent 3.51 acres. The agricultural land

¹ “Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.” Neb. Rev. Stat. Section 77-132 (Reissue 2009).

² Exhibit 9:1, a map of the subject property, illustrates the property boundaries. The subject property is parcel #011574036. The adjacent 3.51 acres is parcel #011591820.

³ Exhibit 8:1-9, and Exhibit 10:1-2 are part of the property record card for the 5,826 square foot residence.

⁴Per Exhibit 10:3, the first site acre was valued at \$64,000, and each of the two additional site acres was valued at \$9,000.

was broken down by soil type, land use, LVG (land value grouping) code, and number of acres. Four different soil types and their associated LVG codes were listed in the valuation of the agricultural land. The appraiser testified that based upon his personal knowledge and the evidence submitted, he was unable at the hearing to determine what portion of the four soil types the 3.51 adjacent acres accounted for.

In order to resolve this appeal and determine the actual value of the entire parcel, the Commission needs to know the value of the agricultural acres without the inclusion of the 3.51 adjacent acres. In other words, without first separating out the 3.51 acres and its associated soil types and values per acre, the Commission cannot determine the contributory value of the agricultural land associated with the parcel.

The Commission does have competent evidence of the contributory value of two of the components of the subject property. I would find the contribution to value of the improvement associated with the parcel is \$729,950, and the contribution to value of the three site acres is a total of \$82,000. However, we are unable to determine the contribution to value of the 15.23 agricultural acres without a reappraisal of the soil types of the 15.23 acres exclusive of the 3.51 adjacent acres.

The presiding officer's decision would, in effect, throw the baby out with the bath water, by voiding the assessment for the entire parcel, even though the contributory values of the improvement and the non-agricultural site acres are undisputed at a total value of \$811,950. In resolving such an appeal we should instead "make such orders as are appropriate for resolving the dispute but in no case shall the relief be excessive compared to the problems addressed." Neb. Rev. Stat. Section 77-5017(1) (Reissue 2009). The Commission has received competent

evidence of the contributory values of the improvement and the site acres. To declare the entire assessment as void and value the parcel at \$0 would be to grant excessive relief.

I would find that the contributory value of the improvement is \$729,950, and the contributory value of the non-agricultural site acres is \$82,000. Since the Commission is unable to determine the value of the agricultural land, because it was improperly valued with the inclusion of the adjacent 3.51 acres from another section, I would find its contributory value is \$0. Therefore, I would find that the actual value of the parcel for the 2009 tax year is \$811,950.

Robert W. Hotz, Commissioner