

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

DON L. CLARKE,)	
)	
Appellant,)	Case Nos 06A-011, 06A-012, 06A-013,
)	06A-014, and 06A-015
v.)	
)	DECISION AND ORDER AFFIRMING
DODGE COUNTY BOARD OF)	THE DECISIONS OF THE DODGE
EQUALIZATION,)	COUNTY BOARD OF EQUALIZATION
)	
Appellee.)	

The above-captioned cases were called for a hearing on the merits of appeals by Don L. Clarke ("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 May 23, 2007, pursuant to an Order for Hearing and Notice of Hearing issued December 13, 2006. Commissioners Wickersham, Warnes, and Lore were present. Commissioner Wickersham presided at the hearing.

Don L. Clarke, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Stacey Hultquist, a Deputy County Attorney for Dodge County, Nebraska, appeared as legal counsel for the Dodge 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 the consolidated cases 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 appeals to maintain them.
2. The parcels of real property described below are the ("subject property").
3. Actual value of each parcel of the subject property placed on the assessment roll as of January 1, 2006, ("the assessment date") by the Dodge County Assessor, value as proposed in timely protests, and actual value as determined by the County Board is shown in the following tables:

Case No. 06A-011

Description: Tax Lots 7 and 13 Section 32, Township 20, Range 7, Dodge County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$54,000.00	\$30,000.00	\$54,000.00
Improvement	\$-0-	\$-0-	\$-0-
Total	\$54,000.00	\$30,000.00	\$54,000.00

Case No. 06A-012

Description: Tax Lots 11 and 15, SE¼SW¼ Section 32, Township 20, Range 7, Dodge County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$62,145.00	\$33,690.00	\$62,145.00
Improvement	\$-0-	\$-0-	\$-0-
Total	\$62,145.00	\$33,690.00	\$62,145.00

Case No. 06A-013

Description: Tax Lots 27 and 30 Section 32, Township 20, Range 7, Dodge County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$22,005.00	\$12,525.00	\$22,005.00
Improvement	\$-0-	\$-0-	\$-0-
Total	\$22,005.00	\$12,525.00	\$22,005.00

Case No. 06A-014

Description: Tax Lot 36 Section 32, Township 20, Range 7, Dodge County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$8,390.00	\$5,592.00	\$8,390.00
Improvement	\$-0-	\$-0-	\$-0-
Total	\$8,390.00	\$5,592.00	\$8,390.00

Case No. 06A-015

Description: Tax Lots 37 and 39 Section 32, Township 20, Range 7, Dodge County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$7,255.00	\$3,000.00	\$7,255.00
Improvement	\$-0-	\$-0-	\$-0-
Total	\$7,255.00	\$3,000.00	\$7,255.00

4. Appeals of the County Board's decisions were filed with the Commission.
5. The County Board was served with Notices in Lieu of Summons and duly answered those Notices.
6. The appeals were consolidated for hearing by order of the Commission.
7. An Amended Order for Hearing and Notice of Hearing issued on December 13, 2006, set a hearing of the appeals for May 23, 2007, at 9:00 a.m. CDST.
8. 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.
9. Actual value of each parcel for the tax year 2006 is:

Case No.06A-011

Land value	\$54,000.00
Total value	<u>\$54,000.00</u>

Case No.06A-012

Land value	\$62,145.00
Total value	<u>\$62,145.00</u>

Case No.06A-013

Land value	\$22,005.00
Total value	<u>\$22,005.00</u>

Case No.06A-014

Land value	\$8,390.00
Total value	<u>\$8,390.00</u>

Case No.06A-015

Land value	\$7,255.00
Total value	<u>\$7,255.00</u>

**III.
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in each of the above captioned appeals is over issues raised during the county board of equalization proceedings on the appealed decision. *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).
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 her property was not fairly and proportionately equalized or that valuation placed upon her 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

The subject property is composed of 5 unimproved parcels. The Taxpayer testified that he acquired the subject property for hunting purposes. An appraiser for the Dodge County testified that the taxable value determined for the subject property was based on its use for hunting. Hunting is a recreational use of land. *350 Neb. Admin. Code*, ch 10 §001.05E (05/05). All parcels of the subject property were classified as recreational lands. (E13:1, E14:1, E15:1, E16:1, and E17:1)

The Taxpayer asserts that taxable value of the subject property is reduced by access problems, a nuisance created by operation of the solid waste disposal unit for Scribner, and various acts of trespass and vandalism. The Taxpayer stated that he recognized that it is necessary to prove the amount by which actual value might be reduced due to any one or all three of the factors noted.

The Taxpayer sought to quantify the impact of the first factor, access, through his efforts to list various parcels of the subject property for sale. The evidence is that the sole access to the subject property by land is across an easement that terminates at Tax Lot 36. Use of that easement is limited to passenger or recreational vehicles. (E10:3). Once Tax Lot 36 is reached all parcels of the subject property are accessible other than Tax Lot 37. Access to Tax Lot 37 is

provided through another easement from Tax Lot 39 although use of the easement requires crossing the Elkhorn River. The Taxpayer attempted to list parcels for sale without including Tax Lot 36 or any guarantee of access across Tax Lot 36. Without access across Tax Lot 36 the parcels to be listed were landlocked. Various real estate agents noted the lack of access and either declined to list or had an unsuccessful listing. The Taxpayer proposes the following syllogism: A real estate agent will list and sell real estate with value; Real estate agents won't list or can't sell the subject property; The subject property has no value. The Taxpayer has however acknowledged that the subject property has value and that it can be used for the purpose for which the Taxpayer purchased it, hunting. In addition the proposed listings were prepared in a way that diminished value by giving the appearance that the property to be listed was landlocked. An attempt to maximize value would have included a right of access. There is no evidence that the restricted easement to Tax Lot 36 impairs use of the subject property for hunting or has an impact on its taxable value as recreational land for that use.

The Taxpayer produced evidence of the second factor, various acts of trespass, and vandalism. There is no evidence of the reduction of the subject property's taxable value, if any, that might be attributable to the acts of trespassers or vandals.

Evidence was produced that water derived from a sandpoint well had levels of coliform that exceed potable standards. (E25:7) There is no evidence that the noted condition exists throughout the subject property. There is no evidence that the potability of water from one location on the subject property has an impact on its use for hunting or the taxable value it might have as recreational land based on that use.

The Commission is unable to grant relief.

**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 decisions of the County Board are unreasonable or arbitrary and the decisions of the County Board should be affirmed.

**VI.
ORDER**

IT IS THEREFORE ORDERED THAT:

1. The decisions of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2006, are affirmed.
2. Actual value of each parcel of the subject property for the tax year 2006 is:

Case No.06A-011

Land value	\$54,000.00
Total value	<u>\$54,000.00</u>

Case No.06A-012

Land value	\$62,145.00
Total value	<u>\$62,145.00</u>

Case No.06A-013

Land value	\$22,005.00
Total value	<u>\$22,005.00</u>

Case No.06A-014

Land value	\$8,390.00
Total value	<u>\$8,390.00</u>

Case No.06A-015

Land value	\$7,255.00
Total value	<u>\$7,255.00</u>

3. This decision, if no appeal is timely filed, shall be certified to the Dodge County Treasurer, and the Dodge 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 May 30, 2007.

Signed and Sealed. May 30, 2007.

Wm. R. Wickersham, Commissioner

Susan S. Lore, 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.