

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

JOHN A. PFAHL,)	
)	
Appellant,)	Case No 06A-022
)	
v.)	DECISION AND ORDER REVERSING
)	THE DECISION OF THE CASS COUNTY
CASS COUNTY BOARD OF)	BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by John A. Pfahl ("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 March 15, 2007, pursuant to an Order for Hearing and Notice of Hearing issued November 16, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Warnes presided at the hearing.

John A. Pfahl, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Nathan B. Cox, County Attorney for Cass County, Nebraska, appeared as legal counsel for the Cass 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 taxable value of the subject property as of January 1, 2006, is less than taxable value as determined by the County Board. The issues on appeal related to that assertion are:

Was the decision of the County Board determining taxable value of the subject property unreasonable or arbitrary?

What was taxable value of the subject property on January 1, 2006?

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2006, is not equalized with the taxable value of other real property. The issues on appeal related to that assertion are:

Was the decision of the County Board determining taxable value of the subject property unreasonable or arbitrary?

Was taxable value of the subject property 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?

What was the equalized taxable 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. Taxable value of the subject property placed on the assessment roll as of January 1, 2006, ("the assessment date") by the Cass 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: SUBLot 1 OF Lot 8 NW1/4 NW 1/4, SECTION 13, TOWNSHIP 10, RANGE 13 E (10.01 AC), Cass County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$ 60,780.00	\$ 40,000.00	\$ 60,780.00
Home Site			
Residence	\$203,307.00	\$203,307.00	\$203,307.00
Farm Site			
Outbuilding	\$ 11,057.00	\$ 11,057.00	\$ 11,057.00
Total	\$275,144.00	\$254,364.00	\$275,144.00

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 November 16, 2006, set a hearing of the appeal for March 15, 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. Taxable value of the subject property as of the assessment date for the tax year 2006 is:

Agricultural land	\$ 28,476.00
Home Site	\$ 17,500.00
Residence	\$203,307.00
Farm Site	\$ 7,685.00
Outbuildings	<u>\$ 11,057.00</u>
Total	<u>\$268,025.00</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. Qualified agricultural land and horticultural land shall be valued for purposes of taxation at eighty percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2003).
9. Qualified agricultural land and horticultural land means land which is primarily used for the production of agricultural or horticultural products, including wasteland lying in or adjacent to and in common ownership or management with land used for the production of agricultural or horticultural products. Land retained or protected for future agricultural or horticultural uses under a conservation easement as provided in the

Conservation and Preservation Easements Act shall be defined as agricultural land or horticultural land. Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land. Land that is zoned predominantly for purposes other than agricultural or horticultural use shall not be assessed as agricultural land or horticultural land. Neb. Rev. Stat. §77-1359 (1) (Reissue 2003).

10. Agricultural or horticultural products include grain and feed crops; forages and sod crops; animal production, including breeding, feeding, or grazing of cattle, horses, swine, sheep, goats, bees, or poultry; and fruits, vegetables, flowers, seeds, grasses, trees, timber, and other horticultural crops. Neb. Rev. Stat. §77-1359 (2) (Reissue 2003).
11. No residential, commercial, industrial, or agricultural building or enclosed structure or the directly associated land or site of the building or enclosed structure shall be assessed as qualified agricultural or horticultural land. Neb. Rev. Stat. §77-1361 (2) (Reissue 2003).
12. “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
13. Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

14. 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).
15. 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).
16. 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).
17. 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, 366 - 367, 303 N.W.2d 307,311 (1981).
18. Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.” *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534, (1983).

19. 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).
20. 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).
21. 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)
22. 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).
23. "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).

24. 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).
25. 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).
26. "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 is an appeal of the land valuation only for the Taxpayer's subject property. The Taxpayer does not dispute the contribution to value attributable to improvements to his property for 2006. The appeal is both to valuation and equalization of the subject property (Exhibits 1:2 and 8:1).

The subject property is a 10.01 acre tract of land located in Cass County, Nebraska. It is located 2 miles north from the intersection of Highway 75 and Highway 34 and 1/4 mile east on Waconda Road.

The land was purchased by the Taxpayer on July 27, 1998 for \$40,000 (Exhibit 2:1). The land was unimproved at the time of purchase by the Taxpayer. The Taxpayer has added a

house and outbuilding to the subject property since purchasing and before January 1, 2006. He estimated that he had utilized 2.5 acres of his total acreage for his improvements.

In addition, the Taxpayer testified that he had leased 7.7 acres of the total acreage to the adjacent landowner for a cash rent of \$100/acre/year. This lease was in place on January 1, 2006, and the land had a corn crop grown on it for the 2005 crop year. Photos were provided by the Taxpayer, Exhibit 4, which showed the row crops.

The Taxpayer is not disputing the value of the improvements to the subject property. His primary argument is that the 7.7 acres leased for cash crop production was not assessed as agricultural land. The Taxpayer testified that the agricultural use of his land was readily viewable by the County Assessor without coming onto his land for an inspection. He also testified that he told the County Board at his protest hearing of the agricultural use of the 7.7 acres. The Commission agrees that 7.7 acres of the subject property should be assessed as agricultural land and horticultural land.

The Taxpayer did attempt to provide comparable properties in support of this appeal, but all of the properties presented, Exhibits 2:1 to 3:8 are without the complete property record files. The Commission is unable to compare the subject property to these properties without the complete property record files. Without comparable sales to establish the actual value of comparable agricultural land and horticultural land, the Commission must use the actual valuation used by the County to determine taxable value of the 7.7 acres of agricultural land and horticultural land (Exhibit 6:7). The Commission notes that the County has classified the subject property as Agricultural (Exhibit 3:5 and Exhibit 6:5). The Commission also observes that although total value for the land component has a stated total agland value, \$60,780, that it

is assessed at 100 % of value as sites.

The computation of the taxable valuation of the subject property assessed as agricultural land and horticultural land is shown below.

The breakdown of the acreage is as follows:

Total acreage	10.01 acres
Less,	.25 acres, road
Less,	7.70 acres, agricultural
Balance	2.06 acres

The computation of taxable value is as follows:

Homesite, 1.0 acre x \$17,500/1st acre	= \$17,500.
Next 4 acres	
1.06 acre x \$7,250/acre	= \$ 7,685.
Agricultural Use	
2.94 acre x \$7,250/acre	= \$21,315.
4.76 acre x \$3,000/acre	= <u>\$14,285.</u>
Total Actual Value	<u>\$35,595.</u>

The taxable value of the agricultural land and horticultural land is 80% of the total actual value which is $80\% \times 35,595 = \$28,476$.

The taxable value of the land component of the subject property is then calculated as follows:

\$28,476. (80% of actual value of 7.7 acres)
+ \$17,500. (1 st acre) actual value
+ \$ 7,685. (1.06 acres) actual value
= <u>\$53,661.</u>

This valuation treats the Taxpayer's 7.7 acres as agricultural land, but values its actual value using the County's valuation. No change is made to the valuation of the improvements on the subject property.

**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 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 vacated and reversed.

**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 vacated and reversed.
2. Taxable value of the subject property for the tax year 2006 is:

Agricultural land	\$ 28,476.00
Home Site	\$ 17,500.00
Residence	\$203,307.00
Farm Site	\$ 7,685.00
Outbuildings	<u>\$ 11,057.00</u>
Total	<u>\$268,025.00</u>
3. This decision, if no appeal is timely filed, shall be certified to the Cass County Treasurer, and the Cass 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.