

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

ROBERTA CORRIGAN, TRUSTEE,)	
LEROY CORRIGAN TRUST, and THE)	
ROBERTA CORRIGAN FARM)	
PARTNERSHIP, A Nebraska)	
Limited Partnership,)	CASE NO. 03C-82
)	03C-83
Appellants,)	
)	
vs.)	FINDINGS AND FINAL ORDER
)	
BUFFALO COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

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Appearances:

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Before: Commissioners Hans, Lore, Reynolds, and Wickersham.

**I.
STATEMENT OF THE CASE**

Roberta Corrigan, Trustee of the LeRoy Corrigan Trust ("the Taxpayer") and the Roberta Corrigan Farm Partnership own a 142.66-acre tract of land legally described as Part SW¼ & S 44.88' of E 1980' of NW¼ of Section 24, Township 9, Range 16,

Buffalo County, Nebraska. (E12:1). This tract of land is the subject of the appeal in Case Number 03C-82. The Trust and Partnership also own a 17.03 acre-tract of land legally described as the S 20 Rods of NW¹/₄ EXC 2A TR & 2A TR IN NW¹/₄SW¹/₄, in Section 24, Township 9, Range 16, Buffalo County, Nebraska. (E11:1). This tract of land is the subject of the appeal in Case Number 03C-83. Each property has certain improvements.

The Buffalo County Assessor ("the Assessor") determined that the recapture value of the land component of the subject property in Case Number 03C-82 was \$6,146,015 as of the January 1, 2003, assessment date. (E1). The Taxpayer timely filed a protest of that determination and alleged that the recapture value was \$1,378,584. (E1). The Buffalo County Board of Equalization ("the Board") denied the protest. (E1:1). The Assessor determined that the recapture value of the land component of the subject property in Case Number 03C-83 was \$711,940 as of the assessment date. (E2:1). The Taxpayer timely filed a protest of that determination and alleged that the recapture value was \$112,000. (E2:1). The Board denied the protest.

The Taxpayer appealed each of the Board's decisions on August 20, 2003. The Commission served a Notice in Lieu of Summons on the Board which the Board answered. The Commission consolidated the appeals for purposes of hearing and issued an Order for Hearing and Notice of Hearing to each of the Parties on

April 16, 2004. An Affidavit of Service in the Commission's records establishes that a copy of the Order and Notice was served on each of the Parties.

The Commission called the case for a hearing on the merits of the appeal in the City of Kearney, Buffalo County, Nebraska, on September 2, 2004. The Taxpayer in each appeal appeared through authorized representatives and through counsel: Peter W. Katt, Esq., and F. B. "Jack" Parker, Esq.. The Board appeared through Andrew Hoffmeister, Esq., Deputy Buffalo County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Wickersham served as the presiding officer.

II. ISSUES

The issues before the Commission are (1) whether the Board's decisions to deny the Taxpayer's recapture valuation protests were incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determinations of recapture value were unreasonable.

III. APPLICABLE LAW

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the Board's decisions were incorrect and (2) that the Board's decisions were unreasonable or

arbitrary. (Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51)). The "unreasonable or arbitrary" element requires clear and convincing evidence that the Board either (1) failed to faithfully perform its official duties; or (2) failed to act upon sufficient competent evidence in making its decision. The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the Board's value was unreasonable. *Garvey Elevators v. Adams County Bd.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

IV. FINDINGS OF FACT

The Commission finds and determines that:

1. The highest and best use of the subject properties is for commercial and residential development.
2. The Board relied on the Assessor's Sales Comparison Methodology in reaching its opinion of value.

V. ANALYSIS

Buffalo County implemented county-wide zoning in 2003. The Assessor also implemented "special valuation" for the first time in 2003. When "special valuation" is implemented, recapture value must also be determined. The issue before the Commission is

the recapture value of the land component of the subject properties as of the January 1, 2003, assessment date. Recapture value is 80% of the actual or fair market value of the land. Neb. Rev. Stat. §77-1343(5) (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §25). In determining actual or fair market value it is appropriate to consider highest and best use. *Lincoln Branch, Inc. v. City of Lincoln*, 245 Neb. 272, 278, 512 N.W.2d 379, 384 (Neb. 1994). "Highest and best use" is the "reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially reasonable, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical probability, financial feasibility, and maximum profitability." *Dictionary of Real Estate Appraisal*, 3rd Ed., Appraisal Institute, 1998, p. 171.

The Taxpayer adduced a "fee appraisal" in support of its opinions of value. The Taxpayer's Appraiser described the Appraisal Report ("the Report") as a "limited appraisal presented in the restricted appraisal format." (E10:2). The Report states it was prepared in accordance with the *Uniform Standards of Professional Appraisal Practice* ("USPAP"). (E10:8, ¶g). USPAP provides "When the intended users include parties other than the client, either a Self-Contained Appraisal Report or a Summary Appraisal Report must be provided. When the intended users do

not include parties other than the client, a Restricted Use Appraisal Report may be provided." *2003 USPAP, Standard 2: Real Property Appraisal Reporting, Standards Rule 2-2, Comment.* The Commission is not a client of any of the Parties or their counsel. Therefore the Restricted Use Report is inappropriate under the very Standards which govern the Taxpayer's Appraiser.

The *Uniform Standards of Professional Appraisal Practice* also provide that:

"Standards Rule 1-1: (This Standards Rule contains binding requirements from which departure is not permitted.) In developing a real property appraisal, an appraiser must: . . . (b) not commit a substantial error of omission or commission that significantly affects an appraisal."

The Taxpayer's Appraiser admitted that his appraisal invoked the Departure Rule, but did not identify that fact in his written report. See, *2003 Uniform Standards of Professional Appraisal Practice, Definition of Limited Appraisal, p. 1; Definition of Restricted Use Appraisal Report, p. 4; Standard 2: Real Property Appraisal, Reporting, §2-2(c), concerning Contents of the Restricted Use Appraisal Report.* The Taxpayer's Appraiser also admitted that he did not disclose in his report the sale of two portions of the subject property, one for \$1,564,366, and the other for \$360,000. The Taxpayer's Appraiser also admitted that

he did not research the records of the Kearney County Building and Zoning Office when preparing his appraisal. (E37).

The Taxpayer's Appraiser considered the two subject properties as a single economic unit. The Taxpayer's Appraiser justified this position by asserting (1) that the smaller tract could not be developed except in conjunction with the larger tract due to location and configuration; and (2) because farmers usually did not want to market property such as the subject property in small development tracts. The Taxpayers' Appraiser then used "comparables" to establish value for the combined tracts.

The Taxpayer's Appraiser testified however, that the small parcels split off the subject properties could be sold for a higher per acre value than the combined tracts as a whole. Evidence of transactions prior to or near the assessment date supports the Taxpayer's Appraiser's testimony. He testified however, that a one-time sale of the combined tracts was a basic assumption of his appraisal. The Taxpayer's Appraiser's testimony establishes that, in recognition of highest and best use the owners were marketing the subject properties in small tracts. The Appraisal Report violates the *USPAP* reporting requirements and is based on an incorrect conclusion of highest and best use. The opinion of value reached under this false assumption is not clear and convincing evidence of actual or fair

market value, or 80% of that value. The Taxpayer's Appraiser's opinion of value is not credible.

The Board relied on the Assessor's determination of recapture value in denying the Taxpayer's protests. (E1). The Assessor valued the subject properties using the Sales Comparison Approach. "The sales comparison approach uses the market to estimate value by comparing the subject to similar properties that have recently sold. When comparing the sold properties to the subject being appraised, the assessor must consider similarities and differences that affect value. Financing terms, market conditions, location and physical characteristics that must be considered when making adjustments to the sales prices of the comparable properties for their differences from the subject. . . The basic steps in the sales comparison approach are (1) defining the appraisal problem, (2) collecting and analyzing the data, (3) selecting appropriate units of comparison, (4) making reasonable adjustments based on the market, (5) applying the data to the subject of appraisal." *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 97.

The Assessor's value was based on the sale of eleven comparables properties. (E23; E29). The characteristics of the properties which sold differ from the subject property, primarily in terms of size and date of sale. The Assessor determined the

median price paid for the sold properties was \$137,214 per acre. (E29). The Assessor reduced this value to between \$31,250 and \$62,500 to account for development, absorption rate, and related costs in developing the subject properties to their highest and best use. (E29). The evidence adduced does not clearly identify the allocation of the reduction to any of the factors considered, but the resulting values are the only credible evidence of value in the record.

The Taxpayer has failed to adduce clear and convincing evidence that the Board's decisions were incorrect and either unreasonable or arbitrary. The Taxpayer has also failed to adduce clear and convincing evidence that the Board's ultimate recapture valuation decisions were unreasonable.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Parties and over the subject matter of this appeal.
2. The Commission is required to affirm the decision of the Board unless evidence is adduced establishing that the Board's action was incorrect and either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).
3. The Board is presumed to have faithfully performed its official duties in determining the [assessed] value of the

property. The Board is also presumed to have acted upon sufficient competent evidence to justify its decision. These presumptions remain until the Taxpayer presents competent evidence to the contrary. If the presumption is extinguished the reasonableness of the Board's value becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests on the Taxpayer. *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).

4. "Actual value" is defined as the market value of real property in the ordinary course of trade, or 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 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. Neb. Rev. Stat. §77-112 (Reissue 2003).
5. "Recapture value" is 80% of actual or fair market value. Neb. Rev. Stat. §77-1343(5) (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §25).

6. The Taxpayer has failed to adduce clear and convincing evidence that the Board's decisions were incorrect and either unreasonable or arbitrary.
7. The Taxpayer has failed to adduce clear and convincing evidence that the Board's determinations of recapture value were unreasonable.
8. The Board's decisions must be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Buffalo County Board of Equalization's Orders setting the assessed values of the subject properties for tax year 2003 are affirmed.
2. The Taxpayer's real property in Case Number 03C-82 legally described as Part SW $\frac{1}{4}$ & S 44.88' of E 1980 of NW $\frac{1}{4}$ of Section 24, Township 9, Range 16, Buffalo County, Nebraska, shall be valued as follows for tax year 2003:

Special Value - Land	\$ 199,925	(E1:2)
Recapture Value - Land	\$6,146,015	(E1:1)
Improvements	\$ 15,060	(E1:1)

3. The Taxpayer's real property in Case Number 03C-83 legally described as S 20 Rods of NW $\frac{1}{4}$ EXC 2A TR & 2A TR IN NW $\frac{1}{4}$ SW $\frac{1}{4}$, in Section 24, Township 9, Range 16, Buffalo County, Nebraska, shall be valued as follows for tax year 2003:

Special Value - Land	\$	23,280	(E2:2)
Recapture Value Land	\$	711,940	(E2:1)
Improvements	\$	17,440	(E2:1)

4. Any request for relief by any Party not specifically granted by this order is denied.
5. This decision, if no appeal is filed, shall be certified to the Buffalo County Treasurer, and the Buffalo County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).
6. This decision shall only be applicable to tax year 2003.
7. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

Dated this 13th day of September, 2004.

Robert L. Hans, Commissioner

Susan S. Lore, Commissioner

Mark P. Reynolds, Vice-Chair

Wm. R. Wickersham, Chair

SEAL