

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

GERALD L. BREWER,)	
)	
Appellant,)	CASE NO. 03A-39
)	
vs.)	
)	FINDINGS AND FINAL ORDER
LINCOLN COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

Appearances:

For the Appellant: Gerald L. Brewer
2121 William Avenue
North Platte, NE 69101

For the Appellee: Joe Wright, Esq.
Deputy Lincoln County Attorney
301 North Jeffers Street, Suite 101A
North Platte, NE 69101

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

**I.
STATEMENT OF THE CASE**

Gerald L. Brewer ("the Taxpayer") owns an unimproved 73.79 acre tract of land legally described as Part of Government Lot 1 & Pt NW¼ of Section 13, Township 13, Range 30, in Lincoln County, Nebraska. (E14:1).

The Lincoln County Assessor ("the Assessor") determined that 80% of the subject property's actual or fair market value was \$49,810 as of the January 1, 2003, assessment date. (E14:1; E1). The Taxpayer timely filed a protest of that determination and alleged that 80% of the subject property's actual or fair market

value was \$40,000. (E1). The Lincoln County Board of Equalization ("the Board") denied the protest. (E1).

The Taxpayer appealed the Board's decision on August 20, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 8, 2003, which the Board answered on September 29, 2003. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on May 28, 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 North Platte, Lincoln County, Nebraska, on September 23, 2004. The Taxpayer appeared personally at the hearing. The Board appeared through Joe Wright, Deputy Lincoln County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer.

The Commission afforded each of the Parties the opportunity to present evidence and argument. The Board, at the close of the Taxpayer's case-in-chief, moved to dismiss the appeal for failure to overcome the statutory presumption. The Motion to Dismiss was overruled.

**II.
ISSUES**

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayer's valuation protest was incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determination of value was unreasonable.

**III.
APPLICABLE LAW**

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the Board's decision was incorrect and (2) that the Board's decision was 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 Taxpayer alleged that the actual or fair market value of the subject property was \$500 per acre, or \$36,895.
2. The Taxpayer testified that there were at least 14-acres of wasteland on the subject property.

**V.
ANALYSIS**

An owner who is familiar with his property and knows its worth is permitted to testify as to its value. *US Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999). The Taxpayer alleged that (1) the commercial development in the area prior to the assessment date caused excess drainage which in turn caused the Fremont Slough which runs through the subject property to overflow; and (2) the commercial development resulted in contamination of the Fremont Slough, which the Taxpayer's cattle depend on for water.

The Taxpayer's opinion evidence alone is not clear and convincing evidence of the actual or fair market value of the subject property as of the assessment date based on these factors. The Taxpayer offered no evidence quantifying the impact of these factors on actual or fair market value.

The Taxpayer further testified that 20 to 25% of the subject property was wasteland. The Board failed to rebut this evidence. All wasteland in Lincoln County was valued at \$50 per acre for tax year 2003. (E28:1). If fourteen acres are classified as wasteland the resulting calculation of value is as follows: the Taxpayer's land is uniformly assessed at \$675 per acre (E14:4); fourteen acres times \$675 equals \$9,450; reducing the assessed value by \$9,450, and adding back 14 acres at \$50 per acre (\$700) results in an assessed value of \$41,060.

The Assessor testified that the wasteland was observed on the Taxpayer's property, but not measured or quantified. The Assessor further testified that a classification of a portion of the property as wasteland would affect her opinion of value, but she was unable to quantify the change. This evidence constitutes clear and convincing evidence that the Board failed to act upon sufficient competent and credible evidence in reaching its decision. The Board's decision must accordingly be vacated and reversed.

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 actual or fair market 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. The Taxpayer has adduced clear and convincing evidence that the Board's decision was incorrect and unreasonable and arbitrary.
6. The Board's decision must accordingly be vacated and reversed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Lincoln County Board of Equalization's Order setting the assessed value of the subject property for tax year 2003 is vacated and reversed.
2. The Taxpayer's real property legally described as Part of Government Lot 1, and Part of the NW¹/₄ of Section 13, Township 13, Range 30, Lincoln County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Commission:

Land	\$41,060
Improvements	\$ -0-
Total	\$41,060
3. Any request for relief by any Party not specifically granted by this order is denied.
4. This decision, if no appeal is filed, shall be certified to the Lincoln County Treasurer, and the Lincoln County

Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).

5. This decision shall only be applicable to tax year 2003.
6. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

I certify that Commissioner Hans made and entered the above and foregoing Findings and Orders in this appeal on the 23rd day of September, 2004. Commissioner Reynolds dissented. The same were approved and confirmed by Commissioners Lore and Wickersham and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Reissue 2003).

Signed and sealed this 24th day of September, 2004.

SEAL

Wm. R. Wickersham, Chair