

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

BEVERLY A. EDENS,)	
)	
Appellant,)	CASE NO. 04A-59
)	
vs.)	
)	FINDINGS AND ORDERS
BANNER COUNTY BOARD OF)	(STIPULATION AT HEARING)
EQUALIZATION,)	
)	
Appellee.)	

SUMMARY OF DECISION

Beverly A. Edens owns a tract of agricultural land in Banner County. The Taxpayer protested the Banner County Assessor's ("the Assessor") proposed 2004 value to the Banner County Board of Equalization ("the Board"). The Board denied the Taxpayer's protest, and the Taxpayer appeals.

**I.
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.

**II.
STATEMENT OF THE CASE**

The Taxpayer owns an unimproved 480-acre tract of agricultural land legally described as the NE $\frac{1}{4}$ except the East 40' and the W $\frac{1}{2}$ of Section 36, Township 19, Range 57, Banner

County, Nebraska. (E3:1). The Assessor determined that 80% of the subject property's actual or fair market value was \$89,731 as of the January 1, 2004, assessment date. (E1:1). The Taxpayer timely protested that determination and requested that the proposed value be reduced. (E1). The Assessor, after considering the Taxpayer's evidence, recommended that the proposed value be reduced. (E1:2). The Board, however, denied the protest. (E1:1).

The Taxpayer appealed the Board's decision on August 26, 2004. The Commission served a Notice in Lieu of Summons on the Board which the Board answered. The Commission issued an Order for Hearing and Notice of Hearing and served a copy of each of the documents on each of the Parties. The Commission, pursuant to the Notice of Hearing, called the case for a hearing on the merits of the appeal in the City of Scottsbluff, Scotts Bluff County, Nebraska, on September 27, 2005. The Taxpayer appeared personally at the hearing, and with counsel, Daniel J. Thayer, Esq.. The Board appeared through James L. Zimmerman, Esq., Banner County Attorney. Commissioners Hans, Lore, and Reynolds heard the appeal. Commissioner Reynolds served as the presiding officer. Commissioner Wickersham was excused from the proceedings.

The Commission afforded each of the parties the opportunity to present evidence and argument. The Parties, during the course

of the hearing, entered into a stipulation regarding the assessed value of the subject property for tax year 2004.

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 either unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9). 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 the subject property's actual or fair market value, as stipulated to by the Parties, was \$86,741 as of the assessment date.

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) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).
3. The Board is presumed to have faithfully performed its official duties. The Board is also presumed to have acted upon sufficient competent evidence to justify its decisions. 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. A stipulation entered by the parties to a proceeding or by their attorneys within the scope of authority for representation of the parties, establishes the fact or facts stipulated and binds the parties. *Ehlers v. Perry*, 242 Neb. 208, 218, 494 N.W.2d 325, 333 (1993) (Citations omitted).
6. The Parties' stipulation constitutes clear and convincing evidence that the action of the Board was unreasonable and arbitrary, and further that the valuation decision of the Board was unreasonable.
7. The Board's decision must accordingly be vacated and reversed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Banner County Board of Equalization's Order setting the subject property's 2004 assessed value is vacated and reversed.
2. The Taxpayer's real property legally described as NE¼, except the East 40', and the W½ of Section 36, Township 19, Range 57, Banner County, Nebraska, shall be valued as

follows for tax year 2005:

Land	\$86,741
Improvements	\$ -0-
Total	\$86,741

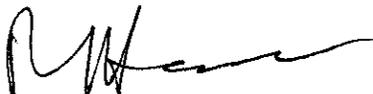
3. Any request for relief by any Party not specifically granted by this Order is denied.
4. This decision, if no appeal is filed, shall be certified to the Banner County Treasurer, and the Banner County Assessor, pursuant to Neb. Rev. Stat. §77-5016(9) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).
5. This decision shall only be applicable to tax year 2004.
6. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

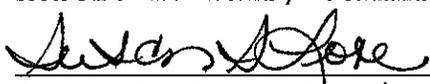
Dated this 4th day of October, 2005.



SEAL



Robert L. Hans, Commissioner



Susan S. Lore, Commissioner



Mark P. Reynolds, Vice-Chair

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 APPEAL MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW. SEE NEB. REV. STAT. §77-5019 (REISSUE 2003, AS AMENDED BY 2005 NEB. LAWS, L.B. 15, §11). IF A PETITION IS NOT TIMELY FILED, THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.