

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

DON L. CLARKE,)	
)	CASE NO. 04A-31
Appellant,)	04A-32
)	04A-33
vs.)	04A-34
)	04A-35
DODGE COUNTY BOARD OF)	
EQUALIZATION,)	FINDINGS AND FINAL ORDER
)	AFFIRMING DECISION OF
Appellee.)	COUNTY BOARD OF EQUALIZATION
)	

Filed March 14, 2005

Appearances:

For the Appellant: Don L. Clarke
3313 South 90th Avenue
Omaha, NE 68124

For the Appellee: Stacey Hultquist, Esq.
Deputy Dodge County Attorney
435 North Park Avenue
Fremont, NE 68025

Before: Commissioners Lore, Reynolds, and Wickersham.

**I.
STATEMENT OF THE CASE**

Don L. Clarke ("the Taxpayer") and others own ten tracts of land in Dodge County, Nebraska. The 69.05 acre tract of land in Case Number 04A-31 is legally described as the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and Tax Lot 11 and Tax Lot 15, Section 32, Township 20, Range 7, Dodge County Nebraska. (E17:1). The 60.0 acre tract of land in Case Number 04A-32 is legally described as Tax Lot 7 and Tax Lot 13, in Section 32, Township 20, Range 7, Dodge County Nebraska. (E20:1). The 24.45 acre tract of land in Case Number 04A-33 is

legally described as Tax Lot 27 and Tax Lot 30, Section 32, Township 20, Range 7, Dodge County Nebraska. (E16:1). The 9.32 acre tract of land in Case Number 04A-34 is legally described as Tax Lot 6 in Section 32, Township 20, Range 7, Dodge County Nebraska. (E19:1). The 9.59 acre tract of land in Case Number 04A-35 is legally described as Tax Lot 37 and Tax Lot 39, in Section 32, Township 20, Range 7, Dodge County Nebraska. (E18:1).

The Taxpayer acquired all of this land in either 1999 or 2000 for approximately \$600 per acre. The Taxpayer has three trailers located on the land in which the Taxpayer and his family stay approximately 30 nights each year when hunting or otherwise using the property as a retreat. The Taxpayer also takes an average of 20 pick-up truck loads a year of firewood from the property for personal use.

The assessment manager/assessor for Dodge County determined that the subject property's actual or fair market value were:

Case Number 04A-31	\$62,145	(E1:2)
Case Number 04A-32	\$54,000	(E2:2)
Case Number 04A-33	\$22,005	(E3:2)
Case Number 04A-34	\$ 8,390	(E4:2)
Case Number 04A-35	\$ 8,360	(E5:2)

The Taxpayer filed a written protest of each determination alleging that the proposed values exceeded actual or fair market

value and should be reduced. (E1:2; E2:2; E3:2; E4:2; E5:2).

The Board denied each of the Taxpayer's protests except for reducing the proposed value in Case Number 04A-35 from \$8,360 to \$6,795. (E1:1; E2:1; E3:1; E4:1; E5:1; E5:2).

The Taxpayer appealed each of the Board's decisions on August 18, 2004. (Appeal Forms). The Commission served a Notice in Lieu of Summons on the Board on August 23, 2004, which the Board answered on September 10, 2004. The Commission issued an Amended Order for Hearing and Amended Notice of Hearing to each of the Parties on January 6, 2005. 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 Lincoln, Lancaster County, Nebraska, on March 8, 2005. The Taxpayer appeared personally at the hearing. The Board appeared through Stacey Hultquist, Esq., the Deputy Dodge County Attorney. Commissioners Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer. Commissioner Hans was excused from the proceedings.

The Commission afforded each of the Parties the opportunity to present evidence and argument. The Parties stipulated that in addition to the evidence adduced in this appeal the Commission, to the extent relevant, could receive and consider the evidence adduced in related cases identified as Commission Cases 03A-103;

03SV-1; 04SV-1; 04SV-2; 04SV-3; and 04SV-4. Thereafter the Commission took the matter under advisement, and the matter now comes on for decision.

II. ISSUES

The issues before the Commission are (1) whether the Board's decisions to deny the Taxpayer's valuation protests were incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determinations of 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 either unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004)). 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 decisions. The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the Board's values were 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's opinion of actual or fair market value is not supported by any evidence in the record.
2. The Taxpayer has limited access to the subject properties.
3. The Taxpayer offered no evidence quantifying the impact of the subject properties' limited access on actual or fair market value.
4. The subject properties are not agricultural or horticultural land.

**V.
ANALYSIS**

The Taxpayer acquired the subject properties in 1999 or 2000 for approximately \$600 per acre. The 2004 assessed value as determined by the Board is approximately \$900 per acre in each case except Case Number 04A-35, where the 2004 assessed value is \$709 per acre. (E1; E2; E3; E4; E5). The Taxpayer testified that, since the subject properties cannot be improved by the addition of a residence and due to poor access, the actual or fair market value could not exceed \$200 per acre. 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 owner's

opinion of value alone, however, does not constitute clear and convincing evidence sufficient to overcome the statutory presumption. *US Ecology, supra.*

The Taxpayer also adduced evidence establishing that the subject properties' access is limited since the subject properties (other than Tax Lot 36) are "landlocked." The subject properties are surrounded by adjoining land owned by others or by the Elkhorn River. (Case Number 03SV-1: E2:3; E2:4). Access to the subject property is therefore limited to access from an adjoining tract of land owned by the Taxpayer, which, in turn requires access via an easement purchased by the Taxpayer in 2000 over a tract of land described as Tax Lot 35. (Case Number 03SV-1: E2:4). The uncontroverted evidence does establish that on occasion the Taxpayer has been required to defend his easement. The Taxpayer, however, adduced no evidence quantifying the impact of the subject properties' limited access on actual or fair market value, or of his costs to defend his easement.

The record does establish that the Taxpayer has placed three trailers on the property, which he and his family use to stay overnight on the property approximately 30 nights each year. The Taxpayer and his family use the property for hunting purposes, which results in approximately four deer being taken from the property each year. The Taxpayer also removes, on average, approximately 20 pick-up truck loads of firewood from the

property each year for personal use. "Recreational" property is defined as:

". . . parcels of real property used or intended to be used for diversion, entertainment, and relaxation on an occasional basis. Some of the uses would include fishing, hunting, camping, boating, hiking, picnicking, and the access or view that simply allows relaxation, diversion and entertainment."

350 Neb. Admin. Code, ch. 10, §001.05E (3/2004). The subject property is used primarily as recreational property. Although the Taxpayer failed to adduce any evidence of value other than his opinion evidence, the Board adduced evidence of prices paid for other recreational property within Dodge County. (E17 - E30). Prices paid ranged from \$700 per acre to \$1,645 per acre for the property adjacent to the subject property.

The Taxpayer contends that due to differences between the subject property and the sales referenced by the Board, the prices paid are not representative of the actual or fair market value of the subject property. The Taxpayer caused four witnesses to be subpoenaed on his behalf. None of these witnesses offered any evidence of actual or fair market value for the subject property, or any evidence quantifying the limited access' impact on actual or fair market value. A taxpayer who only produces evidence that is aimed at discrediting the

valuation methods used by county assessor fails to meet his or her burden of proving that the value of the property was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

The Taxpayer failed to adduce evidence of value sufficient to overcome the statutory presumption in favor of the Board. The Board's decision must accordingly be affirmed.

**VI.
CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the Parties and over the subject matter of these appeals.
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).
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 failed to adduce clear and convincing evidence that the Board's decisions were incorrect and either unreasonable or arbitrary. The Board's decisions to deny the Taxpayer's valuation protests must accordingly be affirmed.

VII. ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Dodge County Board of Equalization's Orders setting the assessed value of the subject properties for tax year 2004 are affirmed.

2. The Taxpayer's real property in Case Number 04A-31 legally described as the SE¹/₄SW¹/₄ and Tax Lot 11 and Tax Lot 15, in Section 32, Township 20, Range 7, Dodge County, Nebraska, shall be valued as follows for tax year 2004 as determined by the Board:

Land	\$62,145
Improvements	\$ -0-
Total	\$62,145

3. The Taxpayer's real property in Case Number 04A-32 legally described as Tax Lot 7 and Tax Lot 13, in Section 32, Township 20, Range 7, Dodge County, Nebraska, shall be valued as follows for tax year 2004 as determined by the Board:

Land	\$54,000
Improvements	\$ -0-
Total	\$54,000

4. The Taxpayer's real property in Case Number 04A-33 legally described as Tax Lot 27 and Tax Lot 30, in Section 32, Township 20, Range 7, Dodge County, Nebraska, shall be valued as follows for tax year 2004 as determined by the Board:

Land	\$22,005
Improvements	\$ -0-
Total	\$22,005

5. The Taxpayer's real property in Case Number 04A-34 legally described as Tax Lot 36, in Section 32, Township 20, Range 7, Dodge County, Nebraska, shall be valued as follows for tax year 2004 as determined by the Board:

Land	\$8,390
Improvements	\$ -0-
Total	\$8,390

6. The Taxpayer's real property in Case Number 04A-35 legally described as Tax Lot 37 and Tax Lot 39, in Section 32, Township 20, Range 7, Dodge County, Nebraska, shall be valued as follows for tax year 2004 as determined by the Board:

Land	\$6,795
Improvements	\$ -0-
Total	\$6,795

7. Any request for relief by any Party not specifically granted by this Order is denied.

8. This decision, if no appeal is filed, shall be certified to the Dodge County Treasurer, and the assessment manager/assessor for Dodge County, pursuant to Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004).

9. This decision shall only be applicable to tax year 2004.

10. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

Dated this 15th day of March, 2005.

Susan S. Lore, Commissioner

Mark P. Reynolds, Vice-Chair

Seal

Wm. R. Wickersham, 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 IN NEBRASKA REVISED STATUTE §77-5019 (REISSUE 2003). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.

PLEASE NOTE: You will only be notified of a change in assessed value for your property for tax year 2005 if the 2005 assessed value differs from the 2004 assessed value as determined by your Assessor or County Board of Equalization. The Commission's decision has no impact on that determination. You should contact your Assessor's Office after March 19, 2005, to determine your property's assessed value for 2005. If you are unsatisfied with that value, you must file a protest before July 1, 2005. If you fail to file a protest, there can be no change to the Assessor's determination of the 2005 assessed value for your property.