

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

WELDON A. RAKOWSKY,	)	
	)	
Appellant,	)	CASE NO. 04R-51
	)	04R-52
vs.	)	
	)	
MADISON COUNTY BOARD OF	)	FINDINGS AND FINAL ORDER
EQUALIZATION,	)	AFFIRMING THE DECISION OF
	)	COUNTY BOARD OF EQUALIZATION
Appellee.	)	

**SUMMARY OF DECISION**

Weldon A. Rakowsky appeals the Madison County Board of Equalization's orders denying one of the Taxpayer's 2004 agricultural valuation protests and granting the other protest only in part. The Commission affirms each of the Board's decisions.

**I.  
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 determination of value were unreasonable.

**II.  
STATEMENT OF THE CASE**

The Taxpayer owns two tracts of agricultural land located in Madison County, Nebraska. The subject property in Case Number 04R-51 is a 158.8-tract of land legally described as the Part of

the SE¼ of Section 8, Township 22, Range 1, in Madison County, Nebraska. This tract of land is unimproved. (E14:1). The Assessor determined that the 80% of the subject property's actual or fair market value was \$171,328 as of the January 1, 2004, assessment date. (E14:4). The Taxpayer timely protested that determination and alleged that 80% of the subject property's actual or fair market value was \$149,177. (E1). The Madison County Board of Equalization ("the Board") denied the protest. (E1).

The subject property in Case Number 04R-52 is a 158.97 acre tract of land legally described as the Part of the NE¼ of Section 8, Township 22, Range 1, in Madison County, Nebraska. The subject property includes 150.37-acres of agricultural land, a single-family residence, and a number of agricultural outbuildings. (E13:1 - 6). The Assessor determined that the 80% of the actual or fair market value of the agricultural land component of the subject property and 100% of the actual or fair market value of the non-agricultural land component of the subject property was \$223,802 as of the January 1, 2004, assessment date. (E2). The Taxpayer only protested the proposed value of the agricultural land component of the subject property (\$189,876) and alleged that 80% of the actual or fair market value of the that component was \$164,491. (E2). The Madison County Board of Equalization ("the Board") granted the protest in

part, and determined that 80% of the actual or fair market value of the agricultural land component value was \$185,031. (E2).

The Taxpayer appealed each of the Board's decisions on August 18, 2004. The Commission served a Notice in Lieu of Summons on the Board in each appeal, which the Board answered. The Commission consolidated each of the appeals and issued an Order for Hearing and Notice of Hearing on February 2, 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 Norfolk, Madison County, Nebraska, on May 25, 2005. The Taxpayer appeared personally at the hearing. The Board appeared through Joel Carlson, the Deputy Madison County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Wickersham served as the presiding officer.

### **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) (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 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 only evidence of value is opinion testimony and a handwritten chart listing assessed values of other properties. (E11).
2. The Taxpayer did not provide copies of the Property Record Files for properties offered as "comparables."

#### **V. ANALYSIS**

The Taxpayer testified that in his opinion the actual or fair market value of the subject property in Case Number 04R-51 was approximately \$1,200 per acre as of the assessment date. The Taxpayer further testified that in his opinion the actual or fair market value of the subject property in Case Number 04R-52 was approximately \$1,300 as of the assessment date.

The Taxpayer's burden of persuasion is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the value placed upon the property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment. *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).

The Taxpayer's only evidence supporting his opinion of value is a one-page, handwritten document concerning assessed values of other agricultural land in Madison County. (E11). The subject properties' actual or fair market value may be established using assessed values of "comparable" properties. *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998). This methodology, however, requires a taxpayer to demonstrate by clear and convincing evidence that the properties offered as "comparables" are truly comparable and that the assessed values of the properties represent actual or fair market value. *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998); *Westgate Recreation Ass'n v. Papio-Missouri River Natural Resources Dist.*, 250 Neb. 10, 17, 547 N.W.2d 484, 492 (1996). Mere assertions that the assessed value of the subject property is wrong and that the assessed values of "comparable" properties

are right does not satisfy the burden imposed on the complaining taxpayer.

The Taxpayer's evidence, however, does not include copies of the Property Record Files for any of the properties offered as "comparables." The Taxpayer is required by the Commission's Order for Hearing and Rules and Regulations to produce copies of the Property Record Files for properties offered as "comparables." *Order for Hearing*, p. 2; 442 Neb. Admin. Code, ch. 5, §020.06 (01/2005). These Property Record Files are necessary when considering the land component of real property since truly "comparable" properties share similar use, physical characteristics (size, shape, and topography), and location. *Property Assessment Valuation*, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, p. 70 - 76. The Taxpayer adduced no evidence that his "comparables" properties have similar soil types and similar percentages of those soil types as the subject properties.

The Taxpayer's evidence does not establish that the subject properties' assessed values are either grossly excessive or are the result of a systematic exercise of intentional will or failure of plain duty as required by *US Ecology*.

Finally, the record also demonstrates that the Taxpayer's requested values for the agricultural land components of the subject properties are the 2003 assessed values for those

properties. (E1; E14:1; E2; E13:1). The market value of real property usually changes from year to year. Changes made to the property since the last assessment will usually affect market value. Occasionally, the prior assessed value may be shown to be incorrect. The prior year's assessed value is therefore not relevant evidence of actual or fair market value in a subsequent year. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

**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. The Taxpayer has failed to adduce any clear and convincing evidence that the Board's decisions were incorrect and either unreasonable or arbitrary.
6. The Board's decisions must accordingly be affirmed.

**VII.  
ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:**

1. The Madison County Board of Equalization's Orders setting the subject properties' 2004 assessed values are affirmed.

2. The Taxpayer's real property in Case Number 04R-51, legally described as Part of the SE¼ of Section 8, Township 22, Range 1, in Madison County, Nebraska, shall be valued as follows for tax year 2004 as determined by the Board:

Land	\$171,328
Improvements	\$ -0-
Total	\$171,328

3. The Taxpayer's real property in Case Number 04R-52, legally described as Part of the NE¼ of Section 8, Township 22, Range 1, in Madison County, Nebraska, shall be valued as follows for tax year 2004 as determined by the Board:

Land	\$185,031
Improvements	\$ 33,926
Total	\$218,957

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 Madison County Treasurer, and the Madison County Assessor, pursuant to Neb. Rev. Stat. §77-5016(9) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).

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

7. 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 25<sup>th</sup> day of May, 2005. The same were approved and confirmed by Commissioners Lore, Reynolds and Wickersham and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §7).

Signed and sealed this 25<sup>th</sup> day of May, 2005.

**SEAL**

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*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, AS AMENDED BY 2005 NEB. LAWS, L.B. 15, §11). 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 on or after June 1, and 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.