

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

RIEL E. WHITNEY and LYLE O.)	
WHITNEY,)	
)	CASE NO. 04R-71
Appellants,)	04R-72
)	
vs.)	
)	FINDINGS AND FINAL ORDER
BROWN COUNTY BOARD OF)	REVERSING DECISION OF
EQUALIZATION,)	COUNTY BOARD OF EQUALIZATION
)	
Appellee.)	

SUMMARY OF DECISION

Riel E. Whitney appeals the Brown County Board of Equalization's orders denying the Taxpayer's 2004 valuation and equalization protests. The Commission vacates and reverses the Board's decisions denying the Taxpayer's requested relief.

**II.
ISSUES**

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

**III.
STATEMENT OF THE CASE**

The Taxpayers own two tracts of land in Brown County, Nebraska. (E31:1; E31:5). The subject property in Case Number

04R-71 is a .48 acre tract of land legally described as Lot 5, Section 12, Township 32, Range 22, Brown County, Nebraska.

(E31:5). The subject property in Case Number 04R-72 is a 160.03 acre tract of land legally described as Part of Section 13, Township 32, Range 22, Brown County, Nebraska. (E31:1). There are no improvements on either tract of land. (E31:6; E31:5).

The Assessor determined that the tract of land in Case Number 04R-71 had an actual or fair market value of \$494 as of the January 1, 2004, assessment date. (E1). The Taxpayer timely protested that determination and alleged that the subject property was incorrectly classified as non-agricultural real property, and should properly be valued as agricultural land and assessed at 80% of actual or fair market value, or \$15. (E1). The Taxpayer also raised the issue of equalization at the hearing before the Brown County Board of Equalization ("the Board"). The Board denied the Taxpayer's protest. (E1).

The Assessor determined that the tract of land in Case Number 04R-72 had an actual or fair market value of \$158,110 as of the January 1, 2004, assessment date. (E2). The Taxpayer timely protested that determination and alleged that the subject property was incorrectly classified as non-agricultural real property, and should properly be valued as agricultural land and assessed at 80% of actual or fair market value, or \$24,990. (E2). The Taxpayer also raised the issue of equalization at the

hearing before the Board. The Board also denied the protest concerning this parcel. (E2).

The Taxpayer appealed each of the Board's decisions on August 20, 2004. 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 and served a copy of the Order and Notice on each of the Parties.

The Commission called the consolidated cases for a hearing on the merits of the appeals in the City of Norfolk, Madison County, Nebraska, on May 24, 2005. The Taxpayer appeared personally at the hearing. The Board appeared through David M. Striech, the Brown County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Wickersham served as the presiding officer.

IV. 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 subject properties were used for agricultural purposes at the time of 2002 sale to the Taxpayer.
2. There is clear and convincing evidence that the subject properties' use did not change after the time of sale.

**V.
ANALYSIS**

**A.
VALUATION**

Agricultural land must be valued at 80% of actual or fair market value. Neb. Rev. Stat. §77-201(2) (Cum. Supp. 2004). The threshold question presented in each appeal is whether the subject property was used for agricultural or horticultural purposes as of the January 1, 2004, assessment date. The subject properties were classified as agricultural land when the

Taxpayers acquired the properties in 2002. The subject properties were also classified as agricultural land in 2003. (E5:1 - 3).

The Assessor changed the subject properties' classification to non-agricultural real property in 2004. (E31:1 - 8). The Taxpayer testified that he had not changed the use of the subject properties since the date of acquisition. The Board adduced no evidence to rebut this testimony. The Taxpayers' land must accordingly be valued as agricultural land. Art. VIII, Neb. Const., §1, ¶4; Neb. Rev. Stat. §77-201(2) (Cum. Supp. 2004); Neb. Rev. Stat. §77-1359 (Reissue 2003). See also *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).

The Taxpayer's opinion of 80% of the subject property's actual or fair market value in Case Number 04R-71 was \$15 as of the January 1, 2004, assessment date. (E1). The Taxpayer's opinion of 80% of the subject property's actual or fair market value in Case Number 04R-72 was \$24,990. (E2). An owner who is familiar with his property and knows its worth is permitted to testify as to its value. *US Ecology, supra*. The Board adduced no evidence of value for the subject properties as agricultural land. The owner's opinion of 80% of actual or fair market value is therefore the only evidence of value contained in the record based on agricultural use. The owner's opinions of 80% of actual

or fair market value is clear and convincing evidence of value as it was based on the value which would have been assigned to the property had the Assessor valued the subject properties using the same methodology employed to value all other agricultural and horticultural lands. The Board's determinations of value under these circumstances, \$494 in Case Number 04S-71 and \$158,110 in Case Number 04R-72, are not based on sufficient competent evidence, and those values are unreasonable. The Board's decisions must accordingly be vacated and reversed.

B.
EQUALIZATION

The Taxpayer alleged in proceedings before the Board that the Assessor's proposed values were not equalized with comparable agricultural property. (E1; E2). The Board denied the equalization component of the Taxpayer's protests on the basis that the Taxpayer failed to raise the issue in his written protests. (E1; E2). The Taxpayer is not required to raise all issues in the written protests. The Board, and this Commission, has jurisdiction over any issues raised before the Board at any stage of the protest process. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb.App. 499, 505, 583 N.W.2D 353, 357 (1998). The Board's decision to deny the Taxpayer's equalization protests on this basis was incorrect, and both unreasonable and arbitrary.

Equalization is the process of ensuring that all taxable property is assessed at a uniform percentage of actual value. It is the Taxpayer's burden to show by clear and convincing evidence that the assessed value placed on his property is grossly excessive when compared with assessed values placed on other similar property. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999). See also *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984). The Taxpayer's requested agricultural values are, from the record before the Commission, equalized with 2004 assessed values of comparable agricultural land. (E1; E2; E31: 1 - 8; E14:1 - 3; E15 - E17; E19; E23). No further relief is therefore necessary.

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. The Taxpayer has adduced clear and convincing evidence that the Board's decisions were incorrect and both unreasonable and arbitrary. The Taxpayer has also adduced clear and convincing evidence that the Board's determinations of value were unreasonable.
5. The Board's decisions must therefore be vacated and reversed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Brown County Board of Equalization's Orders setting the subject properties' 2004 assessed values are vacated and reversed.
2. The Taxpayer's real property in Case Number 04R-71 legally described as Lot 5, Section 12, Township 32, Range 22, Brown

County, Nebraska, shall be assessed as agricultural land and valued at 80% of actual or fair market value as follows for tax year 2004:

Land	\$	15
Improvements	\$	-0-
Total	\$	15

3. The Taxpayer's real property in Case Number 04R-72 legally described as Part of Section 13, Township 32, Range 22, Brown County, Nebraska, shall be assessed as agricultural land and valued at 80% of actual or fair market value as follows for tax year 2004:

Land	\$24,990
Improvements	\$ -0-
Total	\$24,990

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 Brown County Treasurer, and the Brown 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.

Dated this 8th day of June, 2005.

Robert L. Hans, Commissioner

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. 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.

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.