

COPY

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

AUGUST GOELZ and MAXINE GOELZ,)	
)	
Appellants,)	CASE NO. 04R-18
)	
vs.)	
)	FINDINGS AND FINAL ORDER
POLK COUNTY BOARD OF)	AFFIRMING DECISION OF BOARD
EQUALIZATION,)	
)	
Appellee.)	

SUMMARY OF DECISION

August Goelz and Maxine Goelz appeal the Polk County Board of Equalization's order denying the Taxpayers' 2004 valuation protest. The Commission affirms the Board's decision denying the Taxpayer's appeal.

**I.
ISSUES**

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayers' 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 Taxpayers own a 2.24-acre tract of land legally described as Part of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, Township 14, Range 1, Polk County, Nebraska. (E6:2). The tract of land is improved with a single-family residence with 1,814 square feet of above-

grade finished living area built in 1980 ("the subject property"). (E6:3).

The Assessor determined that the subject property's actual or fair market value was \$103,065 as of the January 1, 2004, assessment date. (E1:1). The Taxpayers timely protested that determination and alleged that the subject property's actual or fair market value was \$72,000. (E1:1). The Polk County Board of Equalization ("the Board") denied the protest. (E1).

The Taxpayers appealed the Board's decision on August 10, 2004. The Commission served a Notice in Lieu of Summons on the Board on August 12, 2004, which the Board answered on August 24, 2004. The Commission issued an Order for Hearing and Notice of Hearing on February 4, 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 June 15, 2005. August Goelz appeared personally at the hearing. The Board appeared through Ronald E. Colling, the Polk 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 rested without calling any witnesses.

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) (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 Taxpayer's allegation that the nearby livestock operations adversely impact actual or fair market value is only supported by the Taxpayer's opinion testimony.

V.
ANALYSIS

The Taxpayer alleged that the subject property's actual or fair market value was adversely impacted by nearby livestock operations and by rising nitrate levels in the water supply. The Taxpayer on cross-examination admitted that he based his request for relief at least in part on the Court's decision in *Livingston v. Jefferson County Bd. of Equalization*, 10 Neb.App. 934, 640 N.W.2d 426(2002). In the *Livingston* appeal, the taxpayer adduced as evidence of value an appraisal prepared by a appraiser licensed by the State of Nebraska.

The Taxpayer in this appeal failed to comply with the Commission's Rules and Regulations governing production of documentary evidence. Title 442, Neb. Admin. Code, ch. 5, §20 (01/2005). The Taxpayer's only other evidence of value is his opinion testimony the subject property's actual or fair market value was \$75,000 as of the assessment date. 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's burden of persuasion, however, is not met by showing a mere difference of opinion. *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999). An unsupported opinion of value is given little weight.

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 failed to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary.
6. The Taxpayer failed to adduce any evidence that the Board's determination of value was unreasonable.
7. The Board, based upon the applicable law, need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was [incorrect and either] unreasonable or arbitrary.
Bottorf v. Clay County Bd. of Equalization, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998); Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004).

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Polk County Board of Equalization's Orders setting the subject property's 2004 value is affirmed.
2. The Taxpayer's real property legally described as a tract of land in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, Township 14, Range 1, Polk County, Nebraska, shall be valued as follows for tax year 2004 as determined by the Board:

Land	\$ 8,860
Improvements	\$ 94,205
Total	\$103,065

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 Polk County Treasurer, and the Polk 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.

I certify that Commissioner Hans made and entered the above and foregoing Findings and Orders in this appeal on the 15th day of June, 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 15th day of June, 2005.



SEAL

Wm. R. Wickersham
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.