

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

DANIEL J. THAYER and LISA R.)	
THAYER,)	
)	CASE NO. 04A-60
Appellants,)	04A-61
)	04A-62
vs.)	04A-63
)	
BANNER COUNTY BOARD OF)	FINDINGS AND FINAL ORDER
EQUALIZATION,)	AFFIRMING DECISIONS OF THE
)	COUNTY BOARD OF EQUALIZATION
Appellee.)	
)	

SUMMARY OF DECISION

Daniel J. Thayer and Lisa R. Thayer ("the Taxpayers") own four tracts of land in Banner County. The Taxpayers protested the Banner County Assessor's ("the Assessor's") proposed 2004 values for these tracts to the Banner County Board of Equalization ("the Board"). The Board denied each of the Taxpayers' protests, and the Taxpayers appeal.

**I.
ISSUES**

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

**II.
STATEMENT OF THE CASE**

The Taxpayers own four tracts of land located in Banner County, Nebraska. Two tracts of land are agricultural land, and two tracts include agricultural land and associated improvements. (E8; E10; E12; E14). The legal description of each tract is included in a chart found below.

The Assessor proposed valuing each of the tracts in the amounts shown below. (E1:1; E8:1; E2:1; E10:1; E3:1; E12:1; E4; E14:1). The Assessor's proposed values purport to represent 80% of the actual or fair market value of the agricultural land component and 100% of the actual or fair market value of the non-agricultural land and any improvements for each tract as of the January 1, 2004, assessment date. Neb. Rev. Stat. §77-201 (Cum. Supp. 2004).

The Taxpayers protested the Assessor's proposed values and requested the tracts be valued in the amounts shown below. The Board denied each of the Taxpayers' protests.

Case	Legal	Assessor	Taxpayers	Board	Ex #
04A-60	NW $\frac{1}{4}$ & W $\frac{1}{2}$ SW $\frac{1}{4}$ of 5-18-56	\$75,522	\$50,400	\$75,522	E1; E8:1
04A-61	E $\frac{1}{2}$ W $\frac{1}{2}$ & E $\frac{1}{2}$ of 6-18-56	\$150,891	\$100,400	\$150,891	E2; E10:1
04A-62	W $\frac{1}{2}$ & SE $\frac{1}{4}$ of 31-19-56	\$279,149	\$185,600	\$279,149	E3; E12:1
04A-63	SW $\frac{1}{4}$ of 32-19-56	\$95,442	\$63,600	\$95,442	E4; E14:1

The Taxpayers appealed each of the Board's decisions on August 23, 2004. The Commission served a Notice in Lieu of Summons on the Board which the Board answered. The Commission consolidated each of the appeals for purposes of hearing and issued an Order for Hearing and Notice of Hearing. Copies of each document were served on each of the Parties.

The Commission called the consolidated cases for a hearing on the merits of the appeals in the City of Scottsbluff, Scotts Bluff County, Nebraska, on September 27, 2005. The Taxpayers appeared personally at the hearing. The Board appeared through James L. Zimmerman, the Banner County Attorney. Commissioners Hans, Lore, and Reynolds heard the appeals. Commissioner Wickersham was excused from the proceedings. Commissioner Reynolds served as the presiding officer.

III. APPLICABLE LAW

The Taxpayers are 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, 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 Taxpayers, 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 Taxpayers' evidence included testimony concerning the price paid for the property; testimony concerning the Environmental Quality Incentives Program (EQUIP), a federal program reauthorized in the federal Farm Security and Rural Investment Act of 2002; and income and expense statements for the four tracts for calendar years 2003 and 2004. The Taxpayers however, failed to correlate the impact of these factors on actual or fair market value.
2. The Taxpayers' only other evidence of actual or fair market value is opinion testimony.

V. ANALYSIS

The Taxpayers allege that the subject properties are overvalued. The Taxpayers allege this overvaluation is a result of limited water resources and improper classification of

grassland as irrigated land. The uncontroverted evidence establishes the subject properties, which total approximately 1,353.60 acres, are enrolled in the EQUIP program for a ten-year period. The program requires that some wells be capped, and previously irrigated land be retired and converted to grass. The Taxpayers allege that as a result of their participation in the Program the Soil Inventory for each tract fails to correctly identify the land use. The Taxpayers, however, failed to adduce any documentary evidence other than two single-page income and expense statements. The Taxpayers failed to adduce any evidence, such as Farm Services Agency land use photos, Natural Resources District certifications, or any other documentation of the change in use. The Taxpayers also failed to correlate any of these changes with an impact on actual or fair market value as of the assessment date.

The Taxpayers adduced two Income and Expense statements. (E5; E6). The Taxpayers, however, failed to provide any clear and convincing evidence of the necessary capitalization rate. No indication of value can therefore be derived from this evidence under the Income Approach.

The Taxpayers also allege that the price paid establishes the subject properties' actual or fair market value. The uncontroverted testimony establishes that the transaction was a federal Internal Revenue Service Code §1031 "exchange" between

the Taxpayers' and their parents/in-laws. There is no evidence that this exchange was an arms-length transaction and there is no evidence that the value in exchange represented actual or fair market value for the subject property.

Finally, the Taxpayers adduced opinion testimony concerning the actual or fair market value of the four tracts of land. 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 complaining taxpayer's burden, however, is not met by a difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon the subject 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 Taxpayers have failed to adduce clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Board's decisions 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, 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 Taxpayers present 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 Taxpayers. *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).

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Banner County Board of Equalization's Orders setting the subject properties 2004 assessed values are affirmed.
2. The Taxpayer's real property in Case Number 04A-60 legally described as the NW $\frac{1}{4}$ and the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 5, Township 18, Range 56, Banner County, Nebraska, shall be valued as follows for tax year 2004 as determined by the Board:

Land	\$75,522
Improvements	\$ -0-
Total	\$75,522

3. The Taxpayer's real property in Case Number 04A-61 legally described as E $\frac{1}{2}$ W $\frac{1}{2}$ & the E $\frac{1}{2}$ of Section 6, Township 18, Range 56, Banner County, Nebraska, shall be valued as follows for tax year 2004 as determined by the Board:

Land	\$150,891
Improvements	\$ -0-
Total	\$150,891

4. The Taxpayer's real property in Case Number 04A-62 legally described as the W $\frac{1}{2}$ and SE $\frac{1}{4}$ of Section 31, Township 19, Range 56, Banner County, Nebraska, shall be valued as follows for tax year 2004 as determined by the Board:

Land \$201,935

Improvements \$ 77,214

Total \$279,149

5. The Taxpayer's real property in Case Number 04A-63 legally described as the SW $\frac{1}{4}$ of Section 32, Township 19, Range 56, Banner County, Nebraska, shall be valued as follows for tax year 2004 as determined by the Board:

Land \$70,655

Improvements \$24,787

Total \$95,442

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

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

IT IS SO ORDERED.

I certify that Commissioner Lore made and entered the above and foregoing Findings and Orders in this appeal on the 27th day of September, 2005. The same were approved and confirmed by Commissioners Hans and Reynolds 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 28th day of September, 2005.

SEAL

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 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.