

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

FREMONT LAKE COMPANY,)	
)	
Appellant,)	CASE NOs. 05C-001 and 05C-002
)	
vs.)	FINDINGS AND ORDER
)	AFFIRMING THE DECISIONS OF THE
DODGE COUNTY BOARD OF)	DODGE COUNTY BOARD OF
EQUALIZATION,)	EQUALIZATION
)	
Appellee.)	

The above-captioned cases were called for a hearing on the merits of appeals by Fremont Lake Company, to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on January 10, 2006, pursuant to a Notice and Order for Hearing issued October 7, 2005. Commissioners Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

John A. Haslam, Secretary -Treasurer of Fremont Lake Company, appeared at the hearing on behalf of Fremont Lake Company ("the Taxpayer") without counsel.

The Dodge County Board of Equalization ("the County Board") appeared through counsel, Ms. Stacy Hultquist, Esq., a Deputy County Attorney for Dodge County, Nebraska.

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Supp. 2005) to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case is as follows.

I. STANDARD OF REVIEW

The Taxpayer, in order to prevail, is required to demonstrate that the decision of the County Board was incorrect and arbitrary or unreasonable. Neb. Rev. Stat. §77-5016(8)(Supp. 2005). The presumption created by the statute can be overcome if the Taxpayer shows by clear and convincing evidence that the County Board either failed to faithfully perform its official duties or that the County Board failed to act upon sufficient competent evidence in making its decision. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). It is the Taxpayer's burden to overcome the presumption with clear and convincing evidence of more than a difference of opinion. *Garvey Elevators, Inc v. Adams County Bd. of Equalization* , 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the value as determined by the County Board was unreasonable. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

II. FINDINGS

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described in the appeals filed as Fremont Lake Survey Pt S $\frac{1}{2}$ SE $\frac{1}{4}$, 9.91 acres, Parcel A and Fremont Lake Survey Pt S $\frac{1}{2}$ SE, $\frac{1}{4}$ 1.97 acres, Parcel B, Dodge County, Nebraska ("the subject property").

2. The actual or fair market value of each parcel of the subject property described in the appeals, placed on the assessment roll as of January 1, 2005, ("the assessment date") by the Dodge County Assessor was:

Parcel A	
Land value	\$15,360.00
Improvement value	<u>\$ 5,135.00</u>
Total value	<u>\$20,495.00.</u> (E2:1)

Parcel B	
Land value	\$ 3,055.00
Improvement value	<u>-0-</u>
Total value	<u>\$ 3,055.00.</u> (E1:1)

3. The Taxpayer timely protested those values to the County Board. The Taxpayer proposed the following values for each parcel of the subject property described in the appeals:

Parcel A	
Land value	\$1,000.00
Improvement value	<u>\$5,135.00</u>
Total value	<u>\$6,135.00.</u> (E2:2)

Parcel B	
Land value	\$ 1,000.00
Improvement value	<u>-0-</u>
Total value	<u>\$ 1,000.00.</u> (E1:2)

4. The County Board denied the protests. (E1:1 and E2:1)

5. The Taxpayer timely filed appeals of those decisions to the Commission.
6. The County Board was served with Notices in Lieu of Summons, and duly answered those Notices.
7. The Taxpayer's appeals were consolidated for hearing by order of the Commission.
8. An Order for Hearing and Notice of Hearing issued on October 7, 2005, set a hearing of the Taxpayer's appeals for January 10, 2006, at 9:00 a.m. CST.
9. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.
10. The Taxpayer has not adduced sufficient, clear and convincing evidence to overcome the statutory presumption in favor of the County Board.
11. Based on the entire record before it, the Commission finds and determines that the actual or fair market value of each parcel of the subject property described in the case files for the tax year 2005 is:

	Parcel A
Land value	\$15,360.00
Improvement value	<u>\$ 5,135.00</u>
Total value	<u>\$20,495.00.</u>
	Parcel B
Land value	\$ 3,055.00
Improvement value	<u>-0-</u>
Total value	<u>\$ 3,055.00.</u>

12. The values of the subject property as of the assessment date determined by the County Board are supported by the evidence.
13. The decisions of the County Board were correct and neither arbitrary nor unreasonable.
14. The decisions of the County Board should be affirmed.

III. CONCLUSIONS OF LAW

1. Subject matter jurisdiction of the Commission is over all issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998)
2. The Commission has jurisdiction over the parties and the subject matter of this appeal.
3. The Commission, while making a decision, may not consider testimony, records, documents or other evidence which is not a part of the hearing record except those identified in the Commission's rules and regulations or Section 77-5016 (3). Neb. Rev. Stat. §77-5016 (3) (Supp 2005).
4. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004).
5. “Actual value is 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 a 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. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.” Neb. Rev. Stat. §77-112 (Reissue 2003).

6. Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Neb. Rev. Stat. §77-112 (Reissue 2003).
7. “Actual value, market value, and fair market value mean exactly the same thing.” *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).
8. The Taxpayer must adduce evidence establishing that the action of the County Board was incorrect and unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005). The Nebraska Supreme Court, in considering similar language, has held that “There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence on appeal to the contrary. From that point on, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.” *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523, (2001).

9. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736, (2000).
10. The term "unreasonable" can be applied to a decision of an administrative agency only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447, (1999).
11. The Court has also held that "In an appeal to the county board of equalization or to [the Tax Equalization and Review Commission] and from the [Commission] to this court, the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his 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." *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523, (2001).
12. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).
13. "It is the function of the county board of equalization to determine the actual value of locally assessed property for tax purposes. In carrying out this function, the county board must give effect to the constitutional requirement that taxes be levied uniformly and proportionately upon all taxable property in the county. Individual discrepancies and inequalities within the county must be corrected and equalized by the county board of

equalization.” *AT & T Information Systems, Inc. v. State Bd. of Equalization and Assessment*, 237 Neb. 591, 595, 467 N.W.2d 55, 58, (1991).

14. “The Nebraska Supreme Court in *US Ecology v. Boyd Cty. Bd. of Equal.* held that an owner may testify to the worth of his or her property if the owner is familiar with the property and knows the worth. A corporate officer or president is not, as such, qualified to testify as to value of corporate property. In order to qualify, he or she must be shown to be familiar with the property and have a knowledge of values generally in the vicinity.” *Kohl’s Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb. App. 809, 813 - 814, 638 N.W.2d 877, 881 (2002) (Citations omitted).
15. The appraisal of real estate is not an exact science. *Matter of Bock’s Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874, (1977).

IV. DISCUSSION

The subject property consists of two parcels owned by Fremont Lake Company. The sole shareholders of Fremont Lake Company are the owners of 18 lots for which the Company serves as an owner’s association. (E6:1). Property owned by Fremont Lake Company cannot be sold without the consent of all shareholders of the company. (E4:4). One parcel of the subject property is improved. (E2:2). The value of the improvement is not challenged. (E2:2) The Taxpayer asserts in support of its appeal that the value of the subject property constitutes common ground held for the use of shareholders in Fremont Lake Company and all of its value is included within the taxable value of the 18 individually owned lots included in the Fremont Lakes plat or, in the alternative, that the subject property has no value because it cannot be sold.

The Taxpayer's Secretary-Treasurer testified that, in his opinion, the land in each parcel had a value of \$1,000.00 because he did not believe that the County's computer system would accept a zero value. In addition he testified that the value of the improvement on Parcel A as determined by the Assessor was not an issue. The Taxpayer's Secretary Treasurer also testified that the stockholders would have four considerations in the event of an offer to purchase any property owned by the Taxpayer. Those considerations are: Personal, Tax, Fairness of offer, and Desire to maintain the status quo. He also testified that he believed that a desire to maintain the status quo would be the most important consideration. The documents submitted by the Taxpayer explicitly provide for sale of any property owned by it. (E6:1) The Taxpayer's Secretary-Treasurer also testified the Taxpayer had attempted to sell a lot but was unsuccessful because shareholder consent could not be obtained. While it might be difficult to achieve shareholder consent for a sale pursuant to the documents submitted, it is not impossible. In addition, although value may be affected by legal restrictions even the Taxpayer's Secretary-Treasurer has acknowledged that not all value is lost from the subject property by reason of the shareholder restrictions. The Taxpayer's evidence is that a much larger sum than the taxable value of the subject property would have to be offered to obtain consent to a sale. The Taxpayer's claim that legal restrictions reduce the taxable value of the subject property to a level below that determined by the County Board has not been proven by clear and convincing evidence.

The Taxpayer also asserts that the value of the land owned by the Taxpayer is subsumed or included in the value of the 18 lots owned by individuals. The Taxpayer's Secretary-Treasurer testified that the area maintained by the Taxpayer enhanced the value of individually owned lots

by keeping the density of ownership in the development to about one residence for each three acres. He did not explain how an enhancement of the value of other property caused the value of the subject property to decline. The Commission is unaware of any valuation principles which would allow it to reach that conclusion. In addition the Nebraska Supreme Court has denied relief on similar facts that the value of lands held as a commons were not reduced by any increase in the value of other benefitted land. *Beaver Lake Association v. Co. Bd. of Equal. of Cass County*, 210 Neb. 247, 313 N.W.2d 673 (1981).

**V.
ORDER**

IT IS THEREFORE ORDERED:

1. That the decisions of the County Board determining the actual or fair market value of each parcel of the subject property described in the appeals as of the assessment date, January 1, 2005, as follows:

Parcel A	
Land value	\$15,360.00
Improvement value	<u>\$ 5,135.00</u>
Total value	<u><u>\$20,495.00.</u></u>
Parcel B	
Land value	\$3,055.00
Improvement value	<u>-0-</u>
Total value	<u><u>\$3,055.00.</u></u>

are affirmed.

2. That this decision, if no appeal is timely filed, shall be certified to the Dodge County Treasurer, and the Dodge County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Supp. 2005).
3. That any request for relief, by any party, which is not specifically provided for by this order is denied.
4. That each party is to bear its own costs in this matter.
5. That this decision shall only be applicable to tax year 2005.
6. This order is effective for purposes of appeal January 12, 2006.

Signed and Sealed. January 12, 2006.

Wm. R. Wickersham, Vice-Chairperson

Susan S. Lore Commissioner

Robert L. Hans, Commissioner

SEAL

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 PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW CONTAINED IN NEB. REV. STAT. §77-5019 (SUPP. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.