

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

MERLIN BOLLING,)	
)	
Appellant,)	Case No 06C-027
)	
v.)	DECISION AND ORDER REVERSING
)	THE DECISION OF THE ANTELOPE
ANTELOPE COUNTY BOARD OF)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION)	
)	
and)	
)	
ACP, A NEBRASKA PARTNERSHIP,)	
)	
Appellees.)	

The above-captioned case was called for a hearing on the merits of an appeal by Merlin Bolling ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held at the Holiday Inn Express, 920 S 20th Street, Norfolk, Nebraska, on September 13, 2007, pursuant to an Order for Hearing and Notice of Hearing issued June 12, 2007. Commissioners Wickersham, Warnes, and Hotz were present. Commissioner Wickersham presided at the hearing.

Merlin Bolling was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Michael L. Long, County Attorney for Antelope County, Nebraska, appeared as legal counsel for the Antelope County Board of Equalization ("the County Board").

James R. Walz, appeared as legal counsel for ACP, a Nebraska Partnership.

The Commission denied a motion by ACP, a Nebraska Partnership to dismiss for want of jurisdiction adopting as the basis for denial the findings of fact and conclusions of law contained in its decision and order of September 5, 2007.

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

The Commission is required by Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006) 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.
ISSUES**

The Taxpayer has asserted that actual value of the subject property as of January 1, 2006, is less than actual value as determined by the County Board. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining actual value of the subject property is unreasonable or arbitrary; and

The actual value of the subject property on January 1, 2006.

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above captioned appeal to maintain the appeal.
2. The parcel of real property to which this appeal pertains is described in the table below ("the subject property").
3. Actual value of the subject property placed on the assessment roll as of January 1, 2006, ("the assessment date") by the Antelope County Assessor, value as proposed in a timely

protest, and actual value as determined by the County Board is shown in the following table:

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Description: 59.65 acres tract in E½NE¼ and N½S½ Section 2, Township 25, Range 5, Antelope County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 87,325.00	\$ 32,807.00	\$ 87,325.00
Improvement	\$4,738,405.00	\$1,662,815.00	\$3,000,000.00
Total	\$4,825,730.00	\$1,695,622.00	\$3,087,325.00

4. An appeal of the County Board's decision was filed with the Commission.
5. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
6. An Order for Hearing and Notice of Hearing issued on June 12, 2007, set a hearing of the appeal for September 13, 2007, at 8:00 a.m. CDST.
7. 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.
8. Actual value of the subject property as of the assessment date for the tax year 2006 is:

Land value	\$ 87,325.00
Improvement value	<u>\$4,738,405.00</u>
Total value	<u>\$4,825,730.00.</u>

**III.
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in this appeal is over 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. “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).
3. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Neb. Rev. Stat. §77-112 (Reissue 2003).
4. Use of all of the statutory factors for determination of actual value is not required. All that is required is use of the applicable factors. *First National Bank & Trust of Syracuse v. Otoe Cty.*, 233 Neb. 412, 445 N.W.2d 880 (1989).

5. “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).
6. Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value. Neb. Rev. Stat. §77-131 (Reissue 2003).
7. All taxable real property, with the exception of qualified agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2006).
8. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
9. The presumption that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
10. The presumption in favor of the county board may be classified as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions

governing taxation. *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987).

11. The Commission can grant relief only if there is clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See, Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2006), and e.g. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
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. 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).
14. A decision is unreasonable 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).
15. "An owner who is familiar with his property and knows its worth is permitted to testify as to its value." *U. S. Ecology v. Boyd County Bd. Of Equalization*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).
16. The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998).

17. A Taxpayer, who only produced evidence that was aimed at discrediting valuation methods utilized by county assessor, failed to meet burden of proving that value of property was not fairly and proportionately equalized or that valuation placed upon property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).
18. Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981).

IV. ANALYSIS

The subject property is a highly improved rural commercial parcel. Improvements include nine barns used in a hog farrowing operation with associated improvements and a residence.

The County Board determined actual value of the subject property based on the 2005 sale of a parcel in Holt County, Nebraska. Nebraska's Supreme Court has recognized that a single sale may provide evidence of market value. See, *Firethorn Inv. v. Lancaster County Bd. of Equalization*, 261 Neb. 231, 622 N.W.2d 605 (2001). The Court has also recognized that in tax valuation cases, actual value is largely a matter of opinion and without a precise yardstick for determination with complete accuracy. *US Ecology v. Boyd Cty. Bd. Of Equal.*, 256 Neb. 7, 588 N.W.2d 575 (1999). The weight to be given to a single sale is for the trier of fact. See, *Firethorn*, Supra.

The Holt County parcel, while in a different County, is near the subject property. The Holt County parcel and the subject property are both large hog farrowing operations where sows are bred and held for the birthing of piglets. Piglets are transferred from the farrowing facility to finishing facilities at a young age. Improvements and other attributes of the Holt County facility and the subject property are set forth in the following table.

	Subject (E2:2 thru 5)	Holt Co Facility (E2:33 thru 36)
Year Built	1996	1999
Acres of land	59.65	40
Breeding Barns	4 x 16,769 = 67,076 sq ft	
Gestation Barns	2 x 18,1040 = 36,080 sq st	4 x 17,458 = 69,832 sq ft
Farrowing Barns	2 x 26,660 = 53,320 sq ft	2 x 20,672 = 41,344 sq ft
Shower/Office	2 x 970 = 1,950 sq ft	
Office		1 x 1,728 = 1,728 sq ft
Isolation Barn	2 x 970 = 1,980 sq ft	1 x 7093 = 7,093 sq ft
Nursery		1 x 2668 = 2,668 sq ft
Total Square Feet	168,228 sq ft	122,665 sq ft
Capacity	Design and Use 5,000 head	Design 5,000 head Use 2,500 head*
Residence	1,140 sq ft & att gar 420 sq ft	

* Use restricted by zoning. See, *Premium Farms v. County of Holt*, 263 Neb. 415, 640 N.W.2d 633 (2002)

There are few similarities and some obvious and substantial differences between the subject property and the Holt County parcel: The number of square feet of constructed improvements is substantially different; The subject property has a residence built at the same time as the other improvements; The subject property is operated at its design capacity, while the Holt County parcel is operated at one-half of its design capacity.

The Antelope County Assessor testified that the sale of the Holt County parcel should not be used to determine actual value of other parcels because it was overbuilt as a result of zoning restrictions. The Antelope County Assessor also testified that the sale of the Holt County parcel confirmed the valuation she had determined for the subject property. The conflicting testimony of the Antelope County Assessor does not help to determine the weight to be given to the sale of the parcel in Holt County.

A comparison of the subject property to the parcel sold in Holt County shows that little if any weight can be given to the transaction. The subject property and the Holt County parcel share geographic proximity and use for hog farrowing, but the similarities end there. The differences noted above are substantial. The County Board simply equated the sale price of a single parcel with few similarities to actual value of the subject property. Complete reliance by the County Board on the sale of the Holt County parcel to determine actual value of the subject property in Antelope County was unreasonable.

Another aspect of the County Board's decision needs to be examined. The County Board determined that actual value of the subject property was \$1,564,000. (E1:1). Actual Value as determined by the County Board was composed of two components; Land at \$87,325, and Buildings at \$3,000,000. (E1:1). The stated basis for action was "Lowered improvement value due to no sales to compare to". (E1:1). That statement is difficult to reconcile with the adopted motion made by Henry, seconded by Wilkinson: "lower the improvement value to 3 million due to sale of hog unit in Holt County". (E1:1). As noted, the parcel sold in Holt County contained 40 acres of land. If the consideration paid for the Holt County parcel is to be considered for valuation of improvements only, then an extraction must be made of the

consideration paid for that land. There is no evidence on which to base an extraction of the consideration paid for land from the consideration paid for improvements in the Holt County transaction. The County Board's assignment of all value in the Holt County transaction to improvements was arbitrary.

Having determined that the action of the County Board was unreasonable or arbitrary it is necessary to consider evidence of actual value. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W.2d 518 (2001). Actual value, as determined by the County Assessor using the cost approach, was the sum of various components as follows: Land at \$87,325, and Improvements at \$4,738,405, totaling \$4,825,730. (E2:6 and 12). Pages 8, 9 and 10 of Exhibit 2, provide details concerning some items included in the County Assessor's use of the cost approach. In the detail provided on pages 8 and 9 of Exhibit 2, each of items 1 through 11 are separate buildings. The total replacement cost new of those items is \$5,785,062. That total is shown for Total Building RCN on page 9 of Exhibit 2. Refinements of \$288,880 have to be added to obtain total replacement cost new. (E2:9). Refinements are not described. Replacement cost new of bins as described is \$81,070. (E2:8 and 9). The replacement cost new of the bins may be included in the much greater sum attributed to refinements. In addition there is a residence on the subject property with an assigned contribution to value of \$46,960. (E2:10). The contribution to value for the residence is not shown on the summary of items valued as shown on page 9 of Exhibit 2 but apparently has been added to the value shown on page 9 of Exhibit 2 for the calculations shown on page 6 of Exhibit 2. "Impr. Value" changes from \$4,738,405 on page 6 of Exhibit 2, to \$4,691,445 on page 9 Exhibit 2. The difference between the two contributions to value is \$46,960, the contribution to value calculated for the

residence. There is no evidence that the estimate of value made by the County Assessor based on use of the cost approach is incorrect.

There is no evidence in support of actual value as determined by the County Board.

Actual value of the subject property as of January 1, 2006 is \$4,825,730.00.

**V.
CONCLUSIONS OF LAW**

1. The Commission has subject matter jurisdiction in this appeal.
2. The Commission has jurisdiction over the parties to this appeal.
3. The Taxpayer has adduced sufficient, clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary and the decision of the County Board should be reversed.

**VI.
ORDER**

IT IS ORDERED THAT:

1. The decision of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2006, is reversed.
2. Actual value of the subject property for the tax year 2006 is:

Land value	\$ 87,325.00
Improvement value	<u>\$4,738,405.00</u>
Total value	<u><u>\$4,825,730.00.</u></u>

3. This decision, if no appeal is timely filed, shall be certified to the Antelope County Treasurer, and the Antelope County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2006.
7. This order is effective for purposes of appeal on October 3, 2007.

Signed and Sealed. October 3, 2007.

Wm. R. Wickersham, Commissioner

Robert W. Hotz, Commissioner

William C. Warnes, 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 (CUM. SUPP. 2006). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.