

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

ORLALEE M. ZIMMERMAN,)	
)	
Appellant,)	Case No 06A-004
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE GAGE
GAGE COUNTY BOARD OF)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Orllalee M. Zimmerman ("the Taxpayer") 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 February 2, 2007, pursuant to an Order for Hearing and Notice of Hearing issued December 1, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Orllalee M. Zimmerman, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

No one appeared on behalf of the Gage County Board of Equalization ("the County Board").

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

Was the decision of the County Board determining taxable value of the subject property unreasonable or arbitrary?

What was taxable value of the subject property on January 1, 2006?

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has an interest, sufficient to maintain this appeal, in a parcel of real property described below. That parcel is the ("subject property").
2. Taxable value of the subject property placed on the assessment roll as of January 1, 2006, ("the assessment date") by the Gage County Assessor, value as proposed in a timely protest, and taxable value as determined by the County Board is shown in the following table:

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Description: SE¼ Section 1, Township 4, Range 5, Gage County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$250,100.00	\$275, 000.00	\$250,100.00
Home Site	\$ 10,000.00	\$with ag land	\$ 10,000.00
Residence	\$123,795.00	\$ 90,335.00	\$123,795.00

Farm Site	\$ 16,500.00	\$with ag land	\$ 16,500.00
Outbuilding	\$ 56,540.00	\$with residence	\$ 56,540.00
Total	\$456,935.00	\$365,335.00	\$456,935.00

3. An appeal of the County Board's decision was filed with the Commission.
4. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
5. An Order for Hearing and Notice of Hearing issued on December 1, 2006, set a hearing of the appeal for February 2, 2007, at 9:00 a.m. CST.
6. 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.
7. Taxable value of the subject property as of the assessment date for the tax year 2006 is:

Agricultural land	\$250,100.00
Farm Site	\$ 16,500.00
Home Site	\$ 10,000.00
Residence	\$123,795.00
Outbuildings	<u>\$ 56,540.00</u>
Total	<u>\$456,935.00</u>

recapture value of the eligible agricultural land and horticultural land for the tax year is:
\$291,645.00.

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. Qualified agricultural land and horticultural land shall be valued for purposes of taxation at eighty percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2003).
9. Qualified agricultural land and horticultural land means land which is primarily used for the production of agricultural or horticultural products, including wasteland lying in or adjacent to and in common ownership or management with land used for the production of agricultural or horticultural products. Land retained or protected for future agricultural or horticultural uses under a conservation easement as provided in the Conservation and Preservation Easements Act shall be defined as agricultural land or horticultural land. Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land. Land that is zoned predominantly for

purposes other than agricultural or horticultural use shall not be assessed as agricultural land or horticultural land. Neb. Rev. Stat. §77-1359 (1) (Reissue 2003).

10. Agricultural or horticultural products include grain and feed crops; forages and sod crops; animal production, including breeding, feeding, or grazing of cattle, horses, swine, sheep, goats, bees, or poultry; and fruits, vegetables, flowers, seeds, grasses, trees, timber, and other horticultural crops. Neb. Rev. Stat. §77-1359 (2) (Reissue 2003).
11. No residential, commercial, industrial, or agricultural building or enclosed structure or the directly associated land or site of the building or enclosed structure shall be assessed as qualified agricultural or horticultural land. Neb. Rev. Stat. §77-1361 (2) (Reissue 2003).
12. Agricultural land and horticultural land may be valued for taxation at eighty percent of its special value. Neb. Rev. Stat. §77-201(3) (Supp. 2005)Special value means the value the land would have for agricultural or horticultural purposes or uses without regard to the actual value the land would have for other uses. Neb. Rev. Stat. §77-1443 (Cum. Supp. 2004).
13. Agricultural land and horticultural land which has been valued for taxation at eighty percent of its special value, is taxable at eighty percent of its recapture value when it becomes ineligible for special valuation. Neb. Rev. Stat. §77-201(3) (Supp. 2005).
14. Recapture value means the actual value of land. Neb. Rev. Stat. §77-1443 (Cum. Supp. 2004).

15. Improvements and the land on which improvements are located are not eligible for special valuation and do not have a recapture value assigned to them. *Id.*
16. 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).
17. 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).
18. 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) (citations omitted)
19. The Commission can grant relief only if the Taxpayer establishes by clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005).

20. "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).
21. 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).
22. 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).
23. "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).

IV. DISCUSSION

The subject property is 160 acres of improved agricultural and horticultural land. (E9:3) Improvements include a residence and numerous outbuildings. (E:2 and 3). The agricultural land and horticultural land was assessed at its special value. (E9:3). Special value and recapture value of that land was protested. (E1:1 and E9:3). The Taxpayers also protested the contribution to taxable value made by the improvements on the subject property. (E1:1).

The Taxpayer testified that the subject property is located near an electrical generation plant ("power plant"). The Taxpayer testified the power plant began operations in late 2005. The subject property is traversed by an electric power transmission line. The Taxpayer testified

that the value of the homesite, building site and the improvements should be reduced by a factor of 50% due to the effects of the electromagnetic field associated with operation of the power plant and transmission lines. The Taxpayer testified that he had no basis for the conclusion that the adjustment for the effects of the electromagnetic field should be 50% and that an appropriate adjustment could be 25% or 75%. The Commission is unable to grant the relief requested without clear and convincing evidence of the adjustment that should be made.

The Taxpayer testified that flood irrigation was more costly than center pivot irrigation and was less desirable because flood irrigation required the use of more water. The Taxpayer testified that the taxable value of the crop land on the subject property should be reduced because over half of it could not be irrigated by pivot irrigation. The Taxpayer cited a portion of a study captioned *Nebraska Farm Real Estate Market Developments 2005-2006* as evidence of the adjustment that should be made. (E14). The report is one of the documents that the Commission has listed as available to it for use in all proceedings. Neb. Admin. Code, ch 5, §031.02 (01/07). The report shows that the Southeast District is composed of 12 counties in Southeast Nebraska including Gage County. *Nebraska Farm Real Estate Market Developments 2005-2006*, at iv. The average value of center pivot irrigated crop land in that district was \$2,743 and for flood irrigated crop land \$2,400, a differential of \$343 per acre. *Id*, at 3. The report also shows that the differential between the value of land irrigated by center pivot and land on which flood irrigation is used varies with the grade of the land. *Id*, at 5. Irrigated land on the subject property is composed of four quality grades ranging from 1A to 4A1. (E9:3). In addition the southeast district is composed of 12 counties including Gage County. It is not possible to infer that what is typical agricultural and horticultural land value for a district is

typical for Gage County or that it can be extended to the subject property composed of four grades of irrigated crop land. The Taxpayer did not offer other evidence of the taxable value of the irrigated crop land.

The Taxpayer has not shown by clear and convincing evidence that the decision of the County Board determining special value or recapture value was unreasonable or arbitrary.

**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 not 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 affirmed.

**VI.
ORDER**

IT IS THEREFORE 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 affirmed.
2. Taxable value of the subject property for the tax year 2006 is:

Agricultural land	\$250,100.00
Farm Site	\$ 16,500.00

Home Site	\$ 10,000.00
Residence	\$123,795.00
Outbuildings	<u>\$ 56,540.00</u>
Total	<u>\$456,935.00</u>

recapture value of the eligible agricultural land and horticultural land for the tax year is \$291,645.00.

3. This decision, if no appeal is timely filed, shall be certified to the Gage County Treasurer, and the Gage 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 February 7, 2007.

Signed and Sealed. February 7, 2007.

Wm. R. Wickersham, Commissioner

Susan S. Lore, Commissioner

Robert L. Hans, 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.