

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

| | | |
|-------------------------------|---|------------------------------|
| GALEN J. ADEN & EINA F. ADEN, |) | |
| |) | |
| Appellant, |) | Case No 06A-099 |
| |) | |
| 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 Galen J. Aden & Eina F. Aden ("the Taxpayers") 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.

Galen J. Aden & Eina F. Aden, were present at the hearing. No one appeared as legal counsel for the Taxpayers.

No one appeared for 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 Taxpayers have 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 Taxpayers have 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 Ex 4.68 A, Section 23, Township 6, Range 8, Gage County, Nebraska.

| | Assessor Notice Value | Taxpayer Protest Value | Board Determined Value |
|-------------------|-----------------------|------------------------|------------------------|
| Agricultural Land | \$143,570.00 | \$100,000.00 | \$136,830.00 |
| Home Site | \$ 10,000.00 | \$ in ag land | \$ 10,000.00 |
| Residence | \$100,285.00 | \$ 52,000.00 | \$100,285.00 |

| | | | |
|-------------|--------------|-----------------|--------------|
| Farm Site | \$ 4,500.00 | \$ in ag land | \$ 4,500.00 |
| Outbuilding | \$ 1,910.00 | \$ in residence | \$ 1,910.00 |
| Total | \$260,265.00 | \$152,000.00 | \$253,525.00 |

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 11:00 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 | \$136,830.00 |
| Farm Site | \$ 4,500.00 |
| Home Site | \$ 10,000.00 |
| Residence | \$100,285.00 |
| Outbuildings | <u>\$ 1,910.00</u> |
| Total | <u><u>\$253,525.00.</u></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. 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).
13. 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.*
14. 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).
15. 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).
16. 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).
17. 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)

18. 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).
19. "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).
20. 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).
21. 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).
22. "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 improved agricultural land and horticultural land. The agricultural land and horticultural land was assessed at its special value. (E6:1). Special value of that land was protested. (E1:1 and 4). The Taxpayers also protested the contribution to taxable value made by the residence on the subject property. (E1:2 and 4). The County Board reduced special value of the agricultural land and horticultural land. (E1:1 and 3).

The Taxpayers proposed two basis for a reduction of special value as determined for the agricultural land and horticultural land. The Taxpayers contended that the special value as determined for the subject property exceeds the value determined for less productive agricultural land and horticultural land. The two comparison parcels offered by the Taxpayers were referred to as farms 4814 and 2757. The County Assessors data sheets for the parcels are at Exhibit 9 and Exhibit 12 respectively. Both comparison parcels are unimproved. To make a comparison with the subject property an adjustment has to be made for the farm site and the home site. The home site was valued at \$10,000.00 and the farm site at \$4,500.00. (E6:1). Total land value of the parcel was \$158,070. (E6:1). The net value assessed for the agricultural land and horticultural land was \$143,570.00 before adjustment by the County Board (\$158,070 - \$10,000 - \$4,500.00). (E6:1). That value was reduced by the County Board. (E1:1 and 3). After reduction by the County Board the special value determined for the agricultural land and horticultural land was \$136,830 (\$151,330 - \$10,000 - \$4,500). The average special value for the agricultural land and horticultural land component of the subject property after County

Board action is \$916.35 per acre ($\$136,830 \div 149.32 \text{ acres} = \916.35 per acre). That value is less than the per acre values calculated for either comparison parcel. (E13:1).

The Taxpayers also asserted that more of the agricultural land and horticultural land should be classified as waste land. Waste land is defined as land that cannot be used economically and is not suitable for agricultural or recreational use. 350 Neb. Admin. Code, ch 14, §002.55 (5/05). Examples of lands classified as waste lands are blowouts, riverwash,(recent unstabilized alluvial deposits), marches, badlands, large deep gullies, (including stream beds and banks), bluffs, rockland, gravel areas, and salt flats. *Id.* The lands the Taxpayers assert should be reclassified are heavily treed. (E5:3 and 7:3). Even heavily treed land is not within the definition of waste land as found in the rules and regulations of the Property Tax Administrator as they are useable for recreation.

The Commission does not find sufficient clear and convincing evidence that the special value of the agricultural land and horticultural land component of the subject property was unreasonable or arbitrary.

The Taxpayers contended that the value of the residence on the subject property was not properly determined. The Taxpayers contended that the taxable value as determined for the tax year 2006 represented too large an increase over the taxable value determined for the prior year. The prior year's assessment is not relevant to the subsequent year's valuation. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201,206 (1988). If a prior year's value is not relevant, any calculation of a percentage increase with that value as a base is also not relevant.

The Taxpayers contended that the residence on the subject property was not properly valued because it was not properly described in the assessor's records and that the appraisers who had inspected the residence did not make a complete or accurate inspection. It is not necessary to describe that testimony or evidence in detail. The Taxpayers did not provide evidence of the adjustment that should be made to value for the defects in the residence or offer comparable sales to show what the value should be. In addition, an appraiser for the county was present, heard the Taxpayers' testimony and opined that his opinion of value would not change because comparable sales supported the value determined by the County Board.

The Commission does not find that the Taxpayers produced sufficient clear and convincing evidence that the determination of value made by the County Board 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 | \$136,830.00 |
| Farm Site | \$ 4,500.00 |
| Home Site | \$ 10,000.00 |
| Residence | \$100,285.00 |
| Outbuildings | <u>\$ 1,910.00</u> |
| Total | <u>\$253,525.00.</u> |

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.