

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

STEVEN G. JONES,)	
)	
Appellant,)	Case Nos 06A-138, 06A-139, 06A-140,
)	06A-141, 06A-142, 06A-143, 06A-144,
v.)	and 06A-145
)	
CUSTER COUNTY BOARD OF)	DECISION AND ORDER AFFIRMING
EQUALIZATION,)	THE DECISIONS OF THE CUSTER
)	COUNTY BOARD OF EQUALIZATION
Appellee.)	

The above-captioned cases were called for a hearing on the merits of appeals by Steven G. Jones ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Holiday Inn Express at 2605 Plum Creek Parkway, Lexington, NE , Nebraska, on April 5, 2007, pursuant to an Order for Hearing and Notice of Hearing issued January 18, 2007. Commissioners Wickersham, Warnes, and Sorensen were present. Commissioner Wickersham presided at the hearing.

Steven G. Jones, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Glenn A Clark, a Deputy County Attorney for Custer County, Nebraska, appeared as legal counsel for the Custer 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 the consolidated cases 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 a sufficient interest in the outcome of the above captioned appeals to maintain them.
2. The parcels of real property described below are the ("subject property").
3. Taxable value of each parcel of the subject property placed on the assessment roll as of January 1, 2006, ("the assessment date") by the Custer County Assessor, value as proposed in timely protests, and taxable value as determined by the County Board is shown in the following tables:

Case No. 06A-138

Description: S½NE¼, S½NW¼ , SW¼ , Lots 1,2,3, & 4, Section 4, Township 13, Range 17, Custer County, Nebraska. (484.44 acres)

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$168,411.00	\$134,729.00	\$168,411.00
Total	\$168,411.00	\$134,729.00	\$168,411.00

Case No. 06A-139

Description: S½ Section 5, Township 13, Range 17, Custer County, Nebraska. (321 acres)

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$116,460.00	\$93,062.00 includes home site	\$116,460.00
Home Site	\$6,200.00	\$	\$6,200.00
Residence	\$166,091.00	\$160,657.00 includes outbuildings	\$119,487.00
Farm Site	\$	\$	\$
Outbuilding	\$13,755.00	\$	\$13,755.00
Total	\$302,506.00	\$253,719.00	\$255,902.00

Case No. 06A-140

Description: E½NE¼, NE¼SE¼, (Part of W½NE¼, N½NW¼, SW¼SE¼) Section 8, Township 13, Range 17, Custer County, Nebraska. (230.4 acres)

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$80,439.00	\$70,511.00 includes home site	\$80,439.00
Home Site	\$6,200.00	\$	\$6,200.00
Residence	\$37,732.00	\$38,531.00 includes outbuildings	\$37,732.00
Farm Site	\$1,500.00	\$	\$1,500.00
Outbuilding	\$799.00	\$	\$799.00
Total	\$126,670.00	\$109,042.00	\$126,670.00

Case No. 06A-141

Description: S $\frac{1}{2}$, Section 33, Township 14, Range 17, Custer County, Nebraska. (320 acres)

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$112,203.00	\$89,762.00	\$112,203.00
Total	\$112,203.00	\$89,762.00	\$112,203.00

Case No. 06A-142

Description: W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 16, Township 15, Range 19, Custer County, Nebraska. (120 acres)

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$43,697.00	\$34,958.00	\$56,810.00
Total	\$43,697.00	\$34,958.00	\$56,810.00

Case No. 06A-143

Description: NE $\frac{1}{4}$ SW $\frac{1}{4}$ except a parcel, Section 16, Township 15, Range 19, Custer County, Nebraska. (39.22 acres)

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$14,475.00	\$11,580.00	\$19,407.00
Total	\$14,475.00	\$11,580.00	\$19,407.00

Case No. 06A-144

Description: NW¼, SW¼, NE¼ Section 21, Township 15, Range 19, Custer County, Nebraska. (480.02 acres)

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$169,182.00	\$143,906.00 includes home site and farm site	\$203,080.00
Home Site	\$6,200.00	\$	\$6,200.00
Residence	\$19,906.00 includes outbuildings	\$19,906.00 includes outbuildings	\$19,906.00 includes outbuildings
Farm Site	\$4,500.00	\$	\$4,500.00
Outbuilding	\$	\$	\$
Total	\$199,788.00	\$163,812.00	\$233,686.00

Case No. 06A-145

Description: NW¼ , Section 22, Township 15, Range 19, Custer County, Nebraska. (160.88 acres)

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$51,148.00	\$40,918.00	\$51,148.00
Total	\$51,148.00	\$40,918.00	\$51,148.00

4. Appeals of the County Board's decisions were filed with the Commission.
5. The County Board was served with Notices in Lieu of Summons and duly answered those Notices.
6. The appeals were consolidated for hearing by order of the Commission.
7. An Order for Hearing and Notice of Hearing issued on January 18, 2007, set a hearing of the appeals for April 5, 2007, at 12:00 p.m. CDST.

- 8. 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.
- 9. Taxable value of each parcel for the tax year 2006 is:

Case No. 06A-138

Agricultural land	\$168,411.00
Total	<u><u>\$168,411.00</u></u>

Case No. 06A-139

Agricultural land	\$116,480.00
Home Site	\$ 6,200.00
Residence	\$119,487.00
Out Buildings	\$ 13,755.00
Total	<u><u>\$255,902.00</u></u>

Case No. 06A-140

Agricultural land	\$ 80,439.00
Home Site	\$ 6,200.00
Residence	\$ 37,732.00
Farm Site	\$ 1,500.00
Out Buildings	\$ 799.00
Total	<u><u>\$126,670.00</u></u>

Case No. 06A-141

Agricultural land	\$112,203.00
Total	<u><u>\$112,203.00</u></u>

Case No. 06A-142

Agricultural land	\$56,810.00
Total	<u>\$56,810.00</u>

Case No. 06A-143

Agricultural land	\$19,407.00
Total	<u>\$19,407.00</u>

Case No. 06A-144

Agricultural land	\$203,080.00
Home Site	\$ 6,200.00
Residence	\$ 19,906.00
Farm Site	\$ 4,500.00
Total	<u>\$233,686.00</u>

Case No. 06A-145

Agricultural land	\$51,148.00
Total	<u>\$51,148.00</u>

**III.
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in each of the above captioned appeals is over issues raised during the county board of equalization proceedings on the appealed decision. *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. 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).
13. 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).
14. 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)
15. 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 (7) (Supp. 2005).

16. "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).
17. 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).
18. 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).
19. "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).
20. 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).
21. 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 her property was not fairly and proportionately equalized or that valuation placed upon her 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).

22. 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

Various parcels of the subject property are improved. All parcels have agricultural land and horticultural land as a component. The Taxpayer stated at the hearing that the contribution to value of the improvements or the land on which improvements were situated were not at issue and that only the contribution to value of the agricultural land and horticultural land component was disputed.

The Taxpayer offered evidence that the values determined by the County Board when multiplied by estimated tax rates resulted in taxes burdens would make operation of the subject property uneconomical. The Commission understands the Taxpayer's testimony as evidence that valuation of the subject property based on use of the income approach would result in a value lower than that determined by the County Board. The income approach is one method for valuation of real property permitted by statute. Neb. Rev. Stat. §77-112 (Reissue 2003).

The Income Approach can be defined as "a set of procedures through which an appraiser derives a value indication for an income-producing property by converting its anticipated benefits (cash flows and reversion) into property value. This conversion can be accomplished in two ways. One year's income expectancy can be capitalized at a market-derived rate or at a capitalization rate that reflects a specified income pattern, return on

investment, and change in the value of the investment. Alternatively, the annual cash flows for the holding period and the reversion can be discounted at a specified yield rate.” *The Dictionary of Real Estate Appraisal*, Fourth Edition, Appraisal Institute, p.143, (2002). The steps required for use of the income approach with direct capitalization may be summarized as (1) estimate potential gross income; (2) deduct estimated vacancy and collection loss to determine effective gross income; (3) deduct estimated expenses to determine net operating income; (4) divide net operating income by an estimated capitalization rate to yield indicated value. *The Appraisal of Real Estate* 12th Edition, The Appraisal Institute, 2001, pp. 493 - 494. A variety of techniques may be used to quantify various components of any application of the approach. *Supra*, at chs 20-24, (2001).

Three major methods are used to develop an indication of value using the income approach: direct capitalization; yield capitalization; and a discounted cash flow analysis. *Id.* The direct capitalization method produces an indication of value based on a single year’s estimated income. *Supra*, at 529. A yield capitalization method requires an analysis of income and expected returns over multiple years. *Supra*, at 549. Discounted cash flow analysis is a refinement of the yield capitalization method in which a reversionary value is added to the indicated value of the income stream. *Supra*, at 569. A reversionary value is added on the assumption that the asset producing an income stream still exists and has value at the end of the period. *Id.* That value is discounted to present value as of the valuation date and added to the value of the income stream. *Supra*, at ch 24.

The Taxpayer did present evidence of expected income based on typical grazing charges and several expense items. Even if the Commission accepted the Taxpayer’s evidence of net

income as sufficient no evidence of a capitalization rate was supplied. The Taxpayer did not present sufficient evidence of actual value based on use of the income approach.

The Taxpayer's other contention is that the County Board's determination of taxable value for the subject property was inflated because that value was derived in part from sales of agricultural land and horticultural land occurring in the "Myrna Valley". The Taxpayer testified that agricultural land and horticultural land was of a better quality than other agricultural land and horticultural land in Custer County, including the subject property, due to the availability of water for irrigation and the lay of the land. The Taxpayer further testified that the County Assessor had recognized that fact in the past and had, for one year, created a market area for the Myrna Valley area with values that reflected the characteristics of land in that part of Custer County. The Taxpayer did not however present evidence of actual value for the agricultural land and horticultural land component of the subject property based on mass appraisal techniques, excluding any sales in the Myrna Valley area, or the sales comparison approach with sales of parcels he considered comparable to the subject property. As noted above it is necessary to do more than criticize the County Board's determination, even when the criticism is valid, it is also necessary to prove actual value. See *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983). *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981).

The Commission is unable to grant relief.

**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 decisions of the County Board are unreasonable or arbitrary and the decisions of the County Board should be affirmed.

**VI.
ORDER**

IT IS THEREFORE ORDERED THAT:

1. The decisions of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2006, are affirmed.
2. Taxable value of each parcel of the subject property for the tax year 2006 is:

Case No. 06A-138

Agricultural land	\$168,411.00
Total	<u>\$168,411.00</u>

Case No. 06A-139

Agricultural land	\$116,480.00
Home Site	\$ 6,200.00
Residence	\$119,487.00
Out Buildings	\$ 13,755.00
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Home Site	\$ 6,200.00
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Agricultural land	\$112,203.00
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Case No. 06A-142

Agricultural land	\$56,810.00
Total	<u><u>\$56,810.00</u></u>

Case No. 06A-143

Agricultural land	\$19,407.00
Total	<u><u>\$19,407.00</u></u>

Case No. 06A-144

Agricultural land	\$203,080.00
Home Site	\$ 6,200.00
Residence	\$ 19,906.00
Farm Site	\$ 4,500.00
Total	<u><u>\$233,686.00</u></u>

Case No. 06A-145

Agricultural land	\$51,148.00
Total	<u>\$51,148.00</u>

3. This decision, if no appeal is timely filed, shall be certified to the Custer County Treasurer, and the Custer 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 May 8, 2007.

Signed and Sealed. May 8, 2007.

Wm. R. Wickersham, Commissioner

Ruth A. Sorensen, 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.