

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

ROGER J. ADEN,)	
)	
Appellant,)	Case No. 07A-080
)	
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 Roger J. Aden ("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 April 3, 2008, pursuant to an Order for Hearing and Notice of Hearing issued January 15, 2008. Commissioners Warnes, Salmon, and Hotz were present. Commissioner Wickersham was excused from participation by the presiding hearing officer. The appeal was heard by a panel of three commissioners pursuant to 442 Neb. Admin. Code, ch. 4, §11 (10/07). Commissioner Warnes was the presiding hearing officer.

Roger J. Aden was present at the hearing without legal counsel.

Randall R. Ritnour, County Attorney for Gage County, Nebraska, was present as legal counsel for the Gage County Board of Equalization ("the County Board").

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

The Commission is required to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-

5018 (Cum. Supp. 2006). 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, 2007, is less than taxable value as determined by the County Board. The issues on appeal related to that assertion are:

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

The taxable value of the subject property on January 1, 2007.

**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 as Sec. 3-3-6 ALL THAT PT OF NW SE LYING S OF BLUE RIVER 2.00 AC, Gage County, Nebraska. ("the subject property"). Exhibit 5:22 and 5:23.
3. Taxable value of the subject property placed on the assessment roll as of January 1, 2007, ("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: Sec. 3-3-6 ALL THAT PT OF NW SE LYING S OF BLUE RIVER 2.00 AC, Gage County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$480.00	\$130.00	\$480.00
Home Site	\$	\$	\$
Residence	\$	\$	\$
Farm Site	\$	\$	\$
Outbuilding	\$	\$	\$
Total	\$480.00	\$130.00	\$480.00

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. The Taxpayer was served with a Notice in Lieu of Summons and duly answered that Notice.
7. An Order for Hearing and Notice of Hearing issued on January 15, 2008, set a hearing of the appeal for April 3, 2008, at 9:00 a.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 the subject property as of the assessment date for the tax year 2007 is:

Agricultural land	\$480.00
Total	<u>\$480.00.</u>

III. APPLICABLE LAW

1. Subject matter jurisdiction of the Commission in this appeal is over all questions necessary to determine taxable value. Neb. Rev. Stat. 77-5016 (7) (Supp. 2007).
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 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. Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Cum. Supp. 2006).
9. Agricultural land and horticultural land means a parcel of land which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure." Neb. Rev. Stat. §77-1359 (1) (Cum. Supp. 2006).
10. "Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture. Agricultural or horticultural purposes includes the following uses of land:
 - (a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and

(b) 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." Neb. Rev. Stat. §77-1359 (2) (Cum. Supp. 2006).

11. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *City of York v. York County Bd. Of Equalization*, 266 Neb. 297, 64 N.W.2d 445 (2003).
12. 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).
13. The presumption disappears if there is competent evidence to the contrary. *Id.*
14. The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2006).
15. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence. See, e.g. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).

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, 580 N.W.2d 561 (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 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).
22. Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. Cf. *Lincoln Tel. and*

Tel. Co. v. County Bd. Of Equalization of York County, 209 Neb. 465, 308 N.W.2d 515 (1981); *Arenson v. Cedar County*, 212 Neb. 62, 321 N.W.2d 427 (1982) (determination of equalized values); and *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value).

IV. FACTS

The subject property is a 2.0 acre parcel of land which is unimproved. The Taxpayer's appeal disputes valuation of the subject property alleging that its actual value is less than the assessed valuation placed on it by the County for 2007.

The Taxpayer testified that he purchased the subject property on October 3, 2004, for \$500. The purchase was made after his attorney contacted the owner of the subject property and inquired about its purchase. There was no evidence presented that there was advertisement or marketing of the property in the open market to the public prior to its purchase by the Taxpayer. No significant changes had been made to the subject property after its purchase. The previous owner of the subject property was the owner of the land across the Blue River and the land prior to its sale was part of one parcel with the Blue River running through its extreme southern portion.

The Taxpayer testified that the subject property has limited access by boat from the Blue River or by foot from the City Park or City Treatment Plant. There is no vehicular access. The general shape of the subject property is that of a triangle as highlighted in yellow and shown on Exhibit 5:24. The Blue River forms the north boundary of the subject property, the entire west boundary of the property abuts a city-owned park and the entire boundary to the south is owned

by the city as a treatment plant. There is no legal access to the subject property except from the river. The city has maintained a barricade on a roadway to the subject property as shown on Exhibit 5:24. The Taxpayer testified that the lack of access and the barricaded roadway by the City was known by him at the time of purchase.

The Taxpayer testified that it was his opinion that the subject property was not suitable for recreational or agricultural use. This was in part because large pieces of debris were scattered throughout the property and there was a heavy tree cover.

The Taxpayer testified that the actual value of the subject property is \$130. Exhibit 1:1. The County had assessed the subject property for 2007 at \$480. Exhibit 1:1 In support of this opinion the Taxpayer testified to the following issues which he alleged diminished the value of the subject property. These issues were as follows:

1. The land use category for the subject property had been misclassified. He believes it should be “wasteland” versus agriculture since it is not accessible.
2. The subject property has an easement in favor of the City for an underground sewage line.
3. The subject property acts as an embankment for the Blue River and after flood conditions has standing water.
4. A creek runs through the subject property and divides it into two sections. The creek runs into the subject property from the west and exits into the Blue River.

**V.
ANALYSIS**

Upon review of all of the testimony of the Taxpayer and the exhibits admitted, the Commission finds that the primary issue presented by the Taxpayer as to the diminished actual value of the subject property was his contention that the property should be classified as “wasteland” instead of as agricultural land with tree cover. Exhibit 5:23.

Wasteland is defined by Title 350, Section 002.55, Chapter 14, Rev. 05/07/054, Agricultural Land and Horticultural Land Assessment Regulations of the Nebraska Department of Property Assessment and Taxation. The definition of wasteland includes ...“To qualify for wasteland the land must be lying in or adjacent to and in common ownership or management with land used for the production of agricultural products.” The testimony of the Taxpayer is that he has not used the subject property for production of agricultural products. His testimony further recited that he does not own any other land in common ownership with the subject property which produces agricultural products. His belief was that since the subject parcel was at one time in ownership with a larger tract of land across the Blue River to the north before its separation by title with his purchase and that the land to the north was still being used for the production of agricultural products, and despite his lack of any ownership interest in this separated land, the subject property should benefit from the history of previous common ownership.

The Commission finds that the subject property is not eligible to be classified as wasteland.

The Taxpayer did not present any other evidence of the actual value for the subject property or present evidence of valuation of comparable properties.

The testimony of the County Assessor was that she classified the use made of the subject property as “recreational,” but she chose to classify this use as “agricultural - tree covered.” Exhibit 5:23. She believed that the market value of the subject property was best reflected by this land classification. The definition of “Recreational” is found in Title 350, section 001.05E, Chapter 14, Rev. 05/07/054, Agricultural Land and Horticultural Land Assessment Regulations of the Nebraska Department of Property Assessment and Taxation. The definition for recreational land includes ...”parcels of real property predominately used or intended to be used for diversion, entertainment, and relaxation on an occasional basis. Some of the uses would include fishing, hunting, camping, boating, hiking, picnicking, and the access or view that simply allows relaxation, diversion and entertainment.”

The Taxpayer testified that when he bought the subject property he had intended to use it for a “paint ball” area. He did not pursue this endeavor after purchase, but did offer it to a youth group for camping, yet this was not pursued due to conditions which included the excess debris, the creek and a heavy infestation of brambles and thorny bushes. His intentions are to clean up the subject property and make use of the parcel for his own personal use.

The Commission has examined all of the evidence presented and finds that the Taxpayer has not rebutted the presumption that the County Board failed to faithfully perform their duties or acted without sufficient competent evidence. *City of York v York County Bd of Equalization*, 266 Neb. 297, 665 N.W. 2d 445 (2003) and *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W. 2d, 518 (2001). Further, the Taxpayer has not proven by

clear and convincing evidence that the County Board was arbitrary or unreasonable in their decision, nor has he proven by the reasonableness of the evidence a different valuation for the subject property. The appeal of the Taxpayer is denied.

**VI.
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 produced competent evidence that the County Board failed to faithfully perform its official duties and to act on sufficient competent evidence to justify its actions.
4. 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.

**VII.
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, 2007, is affirmed.
2. Taxable value, for the tax year 2007, of the subject property is:

Agricultural land	<u>\$480.00</u>
Total	<u><u>\$480.00</u></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 2007.
7. This order is effective for purposes of appeal on May 22, 2008.

Signed and Sealed. May 22, 2008.

Nancy J. Salmon, Commissioner

Robert W. Hotz, Commissioner

William C. Warnes, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.