

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

JOE R. BECK and)	
ROSALIE A. BECK,)	
)	CASE NO. 04A-110
Appellants,)	
)	
vs.)	FINDINGS AND FINAL ORDER
)	DISMISSING THE APPEAL
MERRICK COUNTY BOARD OF)	AT THE CLOSE OF THE TAXPAYER'S
EQUALIZATION,)	CASE
)	
Appellee.)	

SUMMARY OF DECISION

Joe R. Beck and Rosalie A. Beck ("the Taxpayers") protested the Merrick County Assessor's ("the Assessor) proposed 2004 value for the Taxpayers' agricultural land. The Merrick County Board of Equalization's denied the Taxpayers' protest, and the Taxpayers appealed. The Board moved to dismiss the Taxpayers' appeal at the close of the Taxpayers' case-in-chief for failure to prove a *prima facie* case.

**I.
ISSUES**

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayers' valuation protest was incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determination of value was unreasonable.

II.
STATEMENT OF THE CASE

The Taxpayers own a 160 acre tract of land legally described as the NE¼ of Section 15, Township 16, Range 3, Merrick County, Nebraska. (E2:7). The Taxpayers purchased the subject property on December 22, 2003, for \$40,000. (E2:7).

The Assessor determined that 80% of the subject property's actual or fair market value was \$72,530 as of the January 1, 2004, assessment date. (E1). The Taxpayers timely protested that determination and alleged that 80% of the subject property's actual or fair market value was \$32,000. (E1). The Board denied the protest. (E1).

The Taxpayers appealed the Board's decision on August 24, 2004. The Commission served a Notice in Lieu of Summons on the Board which the Board answered. The Commission issued an Amended Order for Hearing and an Amended Notice of Hearing and served a copy of each document on each of the Parties.

The Commission called the case for a hearing on the merits of the appeal in the City of Kearney, Buffalo County, Nebraska, on August 18, 2005. The Taxpayers appeared personally at the hearing. The Board appeared through Steven M. Curry, Esq., the Merrick County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Wickersham served as the presiding officer.

III.
APPLICABLE LAW

The Taxpayers are required to demonstrate by clear and convincing evidence (1) that the Board's decision was incorrect and (2) that the Board's decision was either unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9). The "unreasonable or arbitrary" element requires clear and convincing evidence that the Board either (1) failed to faithfully perform its official duties; or (2) failed to act upon sufficient competent evidence in making its decision. The Taxpayers, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the Board's value was unreasonable. *Garvey Elevators v. Adams County Bd.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

IV.
FINDINGS OF FACT

The Commission finds and determines that:

1. The Taxpayers adduced no documentary evidence.
2. The Taxpayers adduced no opinion of actual or fair market value.
3. The Taxpayers purchased the subject property in a private sale from eight relatives.

4. Nothing in the record establishes that the price paid was the result of an arm's length transaction.

**V.
ANALYSIS**

Agricultural land must be valued for purposes of taxation at 80% of actual or fair market value. Neb. Rev. Stat. §77-201(2) (Cum. Supp. 2004). The Taxpayers contend that the price paid for the subject property eight days prior to the assessment establishes the subject property's actual or fair market value. The Taxpayers further contend that a ban by the Nebraska Natural Resources District on new irrigation wells; the subject property's lack of access; distance from the nearest road which is a minimum maintenance road; and Merrick County's "restrictive" zoning all support the price paid as the actual or fair market value.

An owner who is familiar with his property and knows its worth is permitted to testify as to its value. *US Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999). The Taxpayers here, however, adduced no opinion of actual or fair market value. *Garvey Elevator, supra*.

The Taxpayers' only evidence is testimony concerning the price paid. The price paid for property may be taken into consideration in determining actual value but is not conclusive of the actual value of property for assessment purposes. *Forney*

v. Box Butte County Bd. of Equalization, 7 Neb.App. 417, 424, 582 N.W.2D 631, 637, (1998). Where, however, the price paid is the result of an arm's length transaction evidence of price paid should receive strong consideration. *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982). An "arm's-length transaction" is defined as a transaction between unrelated parties under no duress. *The Dictionary of Real Estate Appraisal*, 12th Ed., Appraisal Institute, 2002, p. 150. Here the uncontroverted evidence establishes that the subject property was acquired in a private sale from relatives. There is no evidence that this transaction was an arm's length transaction, and the price paid is therefore not clear and convincing evidence of the subject property's actual or fair market value as of the assessment date.

The Taxpayers own 940 acres of agricultural land and rents an additional 485 acres of agricultural land, all of which is located within a 10-mile radius of the subject property. This land is located in Nance and Merrick Counties. The Taxpayers also rent additional grazing land near Central City. The Taxpayers have owned some of this land for up to 30 years. In spite of these facts, the Taxpayers had no opinion of actual or fair market value for the subject property.

The Taxpayers also testified that the Natural Resources District ban on the development of new irrigation wells was

disclosed to the Taxpayers in November, 2003, prior to their purchase of the subject property. The Taxpayers failed to provide any evidence of the "restrictive" zoning regulations and failed to adduce any evidence quantifying the impact of these zoning regulations on actual or fair market value.

The Taxpayers were initially unable to locate the nearest minimum maintenance road on Exhibit 19. Later the Taxpayers offered testimony that DD Road is the minimum maintenance road referred to. This road is located south of the parcel adjoining the subject property to the south. The Taxpayers purchased the adjoining parcel in July, 2004. The other agricultural land adjoining the subject property is also owned by relatives of the Taxpayer, which minimizes the impact, if any, of a lack of access to the subject property.

The Taxpayers failed to adduce any evidence of actual or fair market value other than their purchases from relatives. The first purchase is the subject property, the other purchase occurred seven months later. Those purchases, in this instance, do not constitute evidence that the Board's decision was incorrect and either unreasonable or arbitrary.

The Board, at the close of the Taxpayers' case-in-chief, moved to dismiss the appeal for the Taxpayers' failure to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Board, based upon the applicable

law, need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was [incorrect and either] unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998); Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004). The Board's Motion to Dismiss must accordingly be granted and the appeal dismissed.

VI.
CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Parties and over the subject matter of this appeal.
2. The Commission is required to affirm the decision of the Board unless evidence is adduced establishing that the Board's action was incorrect and either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).
3. The Board is presumed to have faithfully performed its official duties. The Board is also presumed to have acted upon sufficient competent evidence to justify its decisions. These presumptions remain until the Taxpayer presents competent evidence to the contrary. If the presumption is extinguished the reasonableness of the Board's value becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests on

the Taxpayer. *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).

4. "Actual value" is defined as the market value of real property in the ordinary course of trade, or 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 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. Neb. Rev. Stat. §77-112 (Reissue 2003).

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Board's Motion to Dismiss is granted.
2. The Taxpayer's real property legally described as the NE¼ of Section 15, Township 16, Range 3, Merrick County, Nebraska, shall be valued as follows for tax year 2004 as determined by the Board:

Land	\$72,530
Improvements	\$ -0-
Total	\$72,530

3. Any request for relief by any Party not specifically granted by this Order is denied.
4. This decision, if no appeal is filed, shall be certified to the Merrick County Treasurer, and the Merrick County Assessor, pursuant to Neb. Rev. Stat. §77-5016(9) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).
5. This decision shall only be applicable to tax year 2004.
6. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

I certify that Commissioner Lore made and entered the above and foregoing Findings and Orders in this appeal on the 18th day of August, 2005. The same were approved and confirmed by Commissioners Hans, Reynolds and Wickersham and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §7).

Signed and sealed this 19th day of August, 2005.

SEAL

Wm. R. Wickersham, Chair

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 APPEAL MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW IN NEBRASKA REVISED STATUTE §77-5019 (REISSUE 2003, AS AMENDED BY 2005 NEB. LAWS, L.B. 15, §11). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.