

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

DEANNA F. BUSKE,	)	
Appellant,	)	CASE NO. 02A-22
vs.	)	DOCKET ENTRY
	)	AND ORDER
MADISON COUNTY BOARD OF	)	DISMISSING APPEAL
EQUALIZATION,	)	AT THE CLOSE OF THE
	)	TAXPAYER'S CASE
Appellee.	)	

The Nebraska Tax Equalization and Review Commission ("the Commission") called the above-captioned case for a hearing on the merits of the appeal on May 28, 2003. The hearing was held in the City of Norfolk, Madison County, Nebraska, pursuant to a Notice of Hearing issued the February 21, 2003. Commissioners Hans, Lore, Wickersham, and Reynolds heard the appeal. Commissioner Wickersham, Vice-Chair, presided at the hearing.

Deanna F. Buske ("the Taxpayer") appeared personally at the hearing. The Madison County Board of Equalization ("the Board") appeared through Joel E. Carlson, the Deputy Madison County Attorney. The Commission made certain documents a part of the record pursuant to Neb. Rev. Stat. §77-5016(5) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9). The Commission also afforded each of the parties the opportunity to present evidence and argument pursuant to Neb. Rev. Stat. §77-5015(Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §8). Each Party was also afforded the opportunity to cross-examine witnesses of

the opposing party as required by Neb. Rev. Stat. §77-5016 (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9).

Neb. Rev. Stat. §77-5018 (Cum. Supp. 2002) requires that every final decision and order entered by the Commission which is adverse to a party be stated in writing or on the record and be accompanied by findings of fact and conclusions of law. The Commission received, heard and considered the exhibits, evidence and argument. Thereafter it entered its Findings of Fact, Conclusions of Law, and a Final Order on the merits of the appeal on the record. Those matters, in substance, are set forth below:

I.  
**STANDARD OF REVIEW**

The Taxpayer, in order to prevail, is required to demonstrate by clear and convincing evidence that (1) the decision of the Board was incorrect, and (2) that the decision of the Board was unreasonable and arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9). The Supreme Court has determined that the "unreasonable or arbitrary" standard requires clear and convincing evidence that the Board either (1) failed to faithfully perform its official duties; or (2) that the Board failed to act upon sufficient competent evidence in making its decision. *Garvey Elevators v. Adams County Bd.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). The Taxpayer, once this initial burden has been

satisfied, must then demonstrate by clear and convincing evidence that the value as determined by the County was unreasonable.

*Garvey Elevators, supra*, 136, 523-524 (2001).

**II.  
FINDINGS OF FACT**

From the record, the Commission finds and determines as follows:

**A.  
PROCEDURAL FINDINGS**

1. The Taxpayer is the owner of record of certain agricultural real property located in Madison County, Nebraska ("the subject property").
2. The Madison County Assessor ("the Assessor") proposed valuing the subject property in the amount of \$51,956 for purposes of taxation as of January 1, 2002 ("the assessment date"). (El).
3. The Taxpayer timely filed a protest of the proposed valuation and requested that the subject property be valued in the amount of \$46,856. (El).
4. The protest alleged that the subject property was overvalued. (El).
5. The Board denied the protest. (El).
6. Thereafter, the Taxpayer timely filed an appeal of the Board's decision to the Commission. (Appeal Form).

7. The Commission served a Notice in Lieu of Summons on the Board on the August 8, 2002. The Board timely filed an Answer on August 16, 2002.
8. The Commission issued an Order for Hearing and Notice of Hearing on February 21, 2003. The Notice set the matter for a hearing on the merits of the appeal for May 28, 2003.
9. The Taxpayer did not protest the value of the improvements to the subject property. The value of that component of the subject property (\$25,570) is not at issue. The only issue before the Commission is the value of the agricultural component of the subject property.
10. Agricultural land is to be valued at 80% of actual or fair market value. Neb. Rev. Stat. §77-201(2) (Cum. Supp. 2002). Non-agricultural land is to be valued at 100% of its actual or fair market value. Neb. Rev. Stat. §77-202(1) (Cum. Supp. 2002).
11. The Board determined that the value of the land component of the subject property was \$26,386 as of the assessment date. (E1). Of this amount, \$3,066 is for the "agricultural home site" (1.60 acres of land) which represents 100% of actual or fair market value as determined by the Board. (E3:9). The remaining value \$23,320 (38.40 acres of land) represents 80% of the actual or fair market value as determined by the Board. (E3:9).

12. The Board moved to dismiss the appeal at the close of the Taxpayer's case-in-chief for failure to prove a prima facie case.

**B.**

**SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS**

1. The subject property is a tract of land approximately 40 acres in size which is legally described as the NE~4NEI--4 of Section 14, Township 23, Range 1, Madison County, Nebraska. (E3:9). The tract of land is located in Market Area 1 of Madison County.
2. The tract of land is improved with a house, a garage, a horse barn, and a pole building.
3. The land consists of 11.00 acres of dry land, 25.40 acres of grass land, a 1.60 acre "home site," and 2 acres of roads, for a total of 40 acres. (E3:9).
4. The Taxpayer alleged that the value of the subject property increased \$5,000 over the 2001 assessed value. The Taxpayer alleged that the value increase was based on the sale of a five acre tract of land which was sold for purposes of developing a gravel pit. The Taxpayer failed to adduce copies of the Property Record File for this property as required by the Commission's Order for Hearing. *Order for Hearing*, February 12, 2003, p. 2, ¶2.

5. The Taxpayer had no opinion of value for the subject property as of the assessment date, and adduced no evidence of actual or fair market value.

**III.  
CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.
2. The Commission is required to affirm the decision of the County unless evidence is adduced establishing that the action of the County was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9). The Nebraska Supreme Court, in considering similar language, has held that "There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence on appeal to the contrary. From that point on, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the

taxpayer on appeal from the action of the board." *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).

3. The Supreme Court has also held that "In an appeal to the county board of equalization or to [the Tax Equalization and Review Commission] and from the [Commission] to this court, the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment." *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).
4. "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 Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).
5. The appraisal of real estate is not an exact science. *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N. W. 2d 872, 874 (1977).

6. A Taxpayer who offers no evidence that the subject property was valued in excess of its actual value and who only produced evidence that was aimed at discrediting valuation methods utilized by county assessor, fails to meet the burden of proving that the valuation placed upon his or 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).
7. 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).
8. "Based upon the applicable law, the 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).

**IV.  
ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:**

1. That the Board's Motion to Dismiss be, and hereby is, granted.
2. That therefore the Taxpayer's agricultural real property legally described as NE-NEB of Section 14, Township 23, Range 1, Madison County, Nebraska, shall be valued as follows for tax year 2002 as determined by the Madison County Board of Equalization:

Land	\$26,386
Improvements	\$25,570
Total	\$51,956
3. That any request for relief by any party not specifically granted by this order is denied.
4. That this decision, if no appeal is filed, shall be certified to the Madison County Treasurer, and the Madison County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9).
5. That this decision shall only be applicable to tax year 2002.

6. That each party is to bear its own costs in this matter.

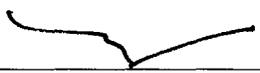
IT IS SO ORDERED.

I certify that Commissioner Reynolds made and entered the above and foregoing Findings and Orders in this appeal on the 28th day of May, 2003. The same were approved and confirmed by Commissioners Hans and Lore, and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005 (5) (Cum. Supp. 2002).

Signed and sealed this 30<sup>th</sup> day of May, 2003.

SEAL



  
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Mark P. Reynolds, Chair