

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

MALMSTEN RANCH CO.,	)	CASE NO.		
	)			
Appellant,	)	02A-42	02A-43	02A-44
	)	02A-45	02A-46	02A-47
vs.	)	02A-48	02A-49	02A-50
	)	02A-51	02A-52	02A-53
GARFIELD COUNTY BOARD OF EQUALIZATION,	)	02A-54	02A-55	02A-56
	)	02A-57	02A-58	
	)			
Appellee.	)		DOCKET ENTRY	
	)		AND ORDER	
	)		REVERSING THE DECISION	
	)		OF THE COUNTY	
	)		BOARD OF EQUALIZATION	
	)			

The Nebraska Tax Equalization and Review Commission ("the Commission") called the above-captioned case for a hearing on the merits of the appeal on the 12<sup>th</sup> day of June, 2003. The hearing was held in the City of Kearney, Buffalo County, Nebraska, pursuant to a Notice of Hearing issued the 6<sup>th</sup> day of March, 2003. Commissioners Hans, Wickersham, and Reynolds heard the appeal. Commissioner Wickersham, Vice-Chair, presided at the hearing.

Malmsten Ranch Co. ("the Taxpayer") appeared at the hearing through Duane L. Pelster, the Company's President. The Garfield County Board of Equalization ("the Board") appeared through Dale Crandall, the Garfield 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**

The Commission, from the record before it, finds and determines as follows:

**A.  
PROCEDURAL FINDINGS**

1. The Taxpayer is the owner of record of certain agricultural real property located in the Garfield County, Nebraska ("the subject properties").
2. The State Assessing Official for Garfield County ("the State Assessing Official") proposed valuing the subject properties for purposes of taxation as of the January 1, 2002 assessment date in the amounts shown below. (E1 - E17).
3. The Taxpayer timely filed a protest of the proposed valuation and requested that the subject property be valued in the amounts paid for the properties at a public auction held in January, 2001. (E1 - E17).

Case No.	State Assessing Official	Taxpayer	Board	Exhibit
02A-42	\$51,200	\$35,520	\$51,200	1
02A-43	\$51,070	\$35,520	\$51,070	2
02A-44	\$102,400	\$71,040	\$102,400	3
02A-45	\$101,750	\$71,040	\$101,750	4
02A-46	\$51,200	\$35,520	\$51,200	5
02A-47	\$101,100	\$71,040	\$101,100	6
02A-48	\$100,275	\$71,144	\$100,275	7
02A-49	\$102,695	\$71,244	\$102,695	8
02A-50	\$101,490	\$71,040	\$101,490	9
02A-51	\$100,645	\$71,040	\$100,645	10
02A-52	\$101,880	\$71,040	\$101,880	11
02A-53	\$52,970	\$35,520	\$52,970	12
02A-54	\$97,720	\$66,789	\$97,720	13
02A-55	\$102,400	\$71,040	\$102,400	14
02A-56	\$101,620	\$71,040	\$101,620	15
02A-57	\$100,970	\$71,040	\$100,970	16
02A-58	\$102,760	\$71,289	\$102,760	17

4. The Board denied each of the protests. (E1 - E17).
5. Thereafter, the Taxpayer timely filed an appeal of the Board's decision to the Commission. (Appeal Form).
6. The Commission served a Notice in Lieu of Summons on the Board on the August 29, 2002. The Board timely filed an Answer on September 12, 2002.

7. The Commission issued an Order for Hearing and Notice of Hearing on March 6, 2003. The Notice set the matter for a hearing on the merits of the appeal for June 12, 2003.

**B.**

**SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS**

1. The subject properties consists of approximately 9,567 acres of agricultural land in Garfield County, Nebraska.
2. The uncontroverted evidence establishes that the Taxpayer acquired the subject property at a public auction held in January, 2001. The purchase price paid was \$1,358,372 for the tract of land.
3. The uncontroverted evidence establishes that the Taxpayer paid \$142 per acre for the parcel.
4. Agricultural land is to be valued at 80% of actual or fair market value. Neb. Rev. Stat. §77-202(2) (Cum. Supp. 2002).
5. The Board rested without calling any witnesses and without explaining any of the evidence contained in its 282-page exhibit. (E21).
6. From the limited record before the Commission, the transaction was an arms-length transaction.
7. From the limited record before the Commission, the purchase price paid, \$1,358,372, represented the actual or fair market value of the subject property.

8. The Taxpayer has adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the Board.
9. The Commission, based on the entire record before it, finds and determines that 80% of the actual or fair market value of the subject property as of the assessment date was \$113.60 per acre.
10. The assessed value of the subject property for tax year 2002 as determined by the Board is not supported by the evidence.
11. Therefore the decision of the Board was incorrect, unreasonable and arbitrary.
12. The Board's decision must be vacated and reversed.

**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 Board unless evidence is adduced establishing that the action of the Board 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. "It is the function of the county board of equalization to determine the actual value of locally assessed property for tax purposes. In carrying out this function, the county board must give effect to the constitutional requirement that taxes be levied uniformly and proportionately upon all taxable property in the county. Individual discrepancies and inequalities within the county must be corrected and equalized by the county board of equalization." *AT & T Information Systems, Inc. v. State Bd. of Equalization and Assessment*, 237 Neb. 591, 595, 467 N.W.2d 55, 58 (Neb. 1991).
5. "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).
6. 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).
7. "Where . . . it is arbitrarily determined without explanation of the methods used or the elements considered, there is no presumption that the valuation is correct, and such a valuation is not supported by competent evidence and is legally erroneous." *Leech, Inc. v. Bd. Of Equal.*, 176 Neb. 841, 846, 127 N.W.2d 917, 921 (1964).

8. "Evidence of sale price alone may not be sufficient to overcome the presumption that the board of equalization has valued the property correctly. But where, as in this case, the evidence discloses the circumstances surrounding the sale and shows that it was an arm's length transaction between a seller who was not under compulsion to sell and a buyer who was not compelled to buy, it should receive strong consideration." *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982).

**IV.  
ORDER**

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

1. That the order of the Garfield County Board of Equalization setting the assessed value of the subject property for tax year 2002 is vacated and reversed.
2. That the Taxpayer's agricultural real property shall be valued as follows for tax year 2002:
  - a. That in Case Number 02A-42, the Taxpayer's agricultural real property legally described as the N½ of Section 15, Township 22, Range 14, consisting of approximately 320 acres in Garfield County, Nebraska; shall be valued as follows for tax year 2002:

Land	\$36,352
Improvements	\$ -0-
Total	\$36,352

- b. That in Case Number 02A-43, the Taxpayer's agricultural real property legally described as the N½ of Section 14, Township 22, Range 14, consisting of approximately 320 acres in Garfield County, Nebraska; shall be valued as follows for tax year 2002:

Land	\$36,352
Improvements	\$ -0-
Total	\$36,352

- c. That in Case Number 02A-44, the Taxpayer's agricultural real property legally described as the All of Section 11, Township 22, Range 14, consisting of approximately 640 acres in Garfield County, Nebraska; shall be valued as follows for tax year 2002:

Land	\$72,704
Improvements	\$ -0-
Total	\$72,704

- d. That in Case Number 02A-45, the Taxpayer's agricultural real property legally described as All of Section 10, Township 22, Range 14, consisting of approximately 640 acres in Garfield County, Nebraska; shall be valued as follows for tax year 2002:

Land	\$72,704
Improvements	\$ -0-
Total	\$72,704

- e. That in Case Number 02A-46, the Taxpayer's agricultural real property legally described as the N½ of Section 13, Township 22, Range 14, consisting of approximately 320 acres in Garfield County, Nebraska; shall be valued as follows for tax year 2002:

Land	\$36,352
Improvements	\$ -0-
Total	\$36,352

- f. That in Case Number 02A-47, the Taxpayer's agricultural real property legally described as All of Section 12, Township 22, Range 14, consisting of approximately 640 acres in Garfield County, Nebraska; shall be valued as follows for tax year 2002:

Land	\$72,704
Improvements	\$ -0-
Total	\$72,704

- g. That in Case Number 02A-48, the Taxpayer's agricultural real property legally described as All of Section 1, Township 22, Range 14, consisting of approximately 640.94 acres in Garfield County, Nebraska; shall be valued as follows for tax year 2002:

Land	\$78,491
Improvements	\$ -0-
Total	\$78,491

- h. That in Case Number 02A-49, the Taxpayer's agricultural real property legally described as All of Section 2, Township 22, Range 14, consisting of approximately 641.84 acres in Garfield County, Nebraska; shall be valued as follows for tax year 2002:

Land	\$72,913
Improvements	\$ -0-
Total	\$72,913

- i. That in Case Number 02A-50, the Taxpayer's agricultural real property legally described as All of Section 27, Township 23, Range 14, consisting of approximately 640 in Garfield County, Nebraska; shall be valued as follows for tax year 2002:

Land	\$72,704
Improvements	\$ -0-
Total	\$72,704

- j. That in Case Number 02A-51, the Taxpayer's agricultural real property legally described as All of Section 28, Township 23, Range 14, consisting of approximately 640 acres in Garfield County, Nebraska; shall be valued as follows for tax year 2002:

Land	\$72,704
Improvements	\$ -0-
Total	\$72,704

- k. That in Case Number 02A-52, the Taxpayer's agricultural real property legally described as All of Section 29, Township 23, Range 14, consisting of approximately 640 acres in Garfield County, Nebraska; shall be valued as follows for tax year 2002:

Land	\$72,704
Improvements	\$ -0-
Total	\$72,704

- l. That in Case Number 02A-53, the Taxpayer's agricultural real property legally described as the E½ of Section 25, Township 22, Range 14, consisting of approximately 320 acres in Garfield County, Nebraska; shall be valued as follows for tax year 2002:

Land	\$36,352
Improvements	\$ -0-
Total	\$36,352

- m. That in Case Number 02A-54, the Taxpayer's agricultural real property legally described as All of Section 30, Township 23, Range 14, consisting of approximately 601.70 acres, in Garfield County, Nebraska; shall be valued as follows for tax year 2002:

Land	\$68,353
Improvements	\$ -0-
Total	\$68,353

- n. That in Case Number 02A-55, the Taxpayer's agricultural real property legally described as All of Section 32, Township 23, Range 14, consisting of approximately 640 acres in Garfield County, Nebraska; shall be valued as follows for tax year 2002:

Land	\$72,704
Improvements	\$ -0-
Total	\$72,704

- o. That in Case Number 02A-56, the Taxpayer's agricultural real property legally described as All of Section 33, Township 23, Range 14, consisting of approximately 640 acres in Garfield County, Nebraska; shall be valued as follows for tax year 2002:

Land	\$72,704
Improvements	\$ -0-
Total	\$72,704

- p. That in Case Number 02A-57, the Taxpayer's agricultural real property legally described as All of Section 34, Township 23, Range 14, consisting of approximately 640 acres in Garfield County, Nebraska; shall be valued as follows for tax year 2002:

Land	\$72,704
Improvements	\$ -0-
Total	\$72,704

- q. That in Case Number 02A-58, the Taxpayer's agricultural real property legally described as All of Section 3, Township 22, Range 14, consisting of approximately 642.24 acres in Garfield County, Nebraska; shall be valued as follows for tax year 2002:

Land	\$72,958
Improvements	\$ -0-
Total	\$72,958

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 Garfield County Treasurer, and the State Assessing Official for Garfield County, 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 Hans made and entered the above and foregoing Findings and Orders in this appeal on the 12<sup>th</sup> day of June, 2003. The same were approved and confirmed by Commissioner Reynolds 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 19<sup>th</sup> day of June, 2003.

*Mark P. Reynolds, Chair*