

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

JAMES D. HIRSCHMAN,)	
)	
Appellant,)	CASE NO. 02A-221
)	02A-222
vs.)	
)	DOCKET ENTRY
HOWARD COUNTY BOARD OF)	AND ORDER
EQUALIZATION,)	AFFIRMING THE DECISION
)	OF THE COUNTY
Appellee.)	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 September 24, 2003. The hearing was held in the City of Kearney, Buffalo County, Nebraska, pursuant to a Notice of Hearing issued June 16, 2003. Commissioners Hans, Lore, Wickersham, and Reynolds heard the appeal. Commissioner Reynolds, Chair, presided at the hearing.

James D. Hirschman ("the Taxpayer") appeared personally at the hearing. The Howard County Board of Equalization ("the Board") appeared through Karin L. Noakes, the Howard 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.
APPLICABLE LAW

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 Howard County, Nebraska ("the subject property").
2. The Howard County Assessor ("the Assessor") proposed valuing the subject property in Case Number 02A-221 in the amount of \$73,747 for purposes of taxation as of January 1, 2002 ("the assessment date"). (E1).
3. The Assessor proposed valuing the subject property in Case Number 02A-222 in the amount of \$111,230 for purposes of taxation as of the assessment date. (E2).
4. The Taxpayer timely protested the Assessor's proposed values. (E1; E2).

5. The protests alleged that the proximity of a feed lot adversely impacted the actual or fair market value of the subject properties. (E1; E2).
6. The Board denied the protests. (E1; E2).
7. The Taxpayer timely appealed the Board's decision to the Commission. (Appeal Form).
8. The Commission served a Notice in Lieu of Summons on the Board on September 13, 2002. The Board timely filed an Answer on September 23, 2002.
9. The Commission issued an Order for Hearing and Notice of Hearing on June 16, 2003. The Notice set the matter for a hearing on the merits of the appeal for September 24, 2003.
10. The Affidavit of Service in the Commission's records establishes that copies of the Order and Notice were served on each of the Parties.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The subject property in Case Number 02A-221 is a tract of land approximately 156 acres in size. The tract of land is legally described as the NE $\frac{1}{4}$ Except 4 acres in Section 29, Township 14, Range 9, Howard County, Nebraska. (E22).
2. The subject property in Case Number 02A-222 is a tract of land approximately 160 acres in size. The tract of land is

legally described as the SE¼ of Section 29, Township 14, Range 9, Howard County, Nebraska. (E23).

3. There are no improvements on either tract of land. (E22; E23).
4. The Taxpayer testified in each case that his opinion of 80% of actual or fair market value was the prior year's assessed value.
5. The Taxpayer failed to adduce any evidence quantifying the impact of the proximity of the feedlot on actual or fair market value of the subject properties.

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 incorrect and either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp.2002, as amended by 2003 Neb. Laws, L.B. 291, §9).
3. The Board's decision is presumed to be correct. 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 action. These presumptions remain in effect until there is competent

evidence to the contrary presented. If such evidence is presented, the presumption disappears. From that point on, the reasonableness of the Board's value is one of fact based upon all the evidence presented. The taxpayer bears the burden of showing the Board's value to be unreasonable.

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

4. The Taxpayer's burden of persuasion is not met by showing a mere difference of opinion. The Taxpayer must establish by clear and convincing evidence that the assessed value is grossly excessive when compared to values of other similar property. The Taxpayer must then establish that the property value 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).
5. 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).

6. The Taxpayer has not adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the Board. That decision must accordingly be affirmed.

**IV.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That Howard County Board of Equalization's Orders setting the assessed value of the subject properties for tax year 2002 is affirmed.
2. That in Case Number 02A-221, the Taxpayer's agricultural real property legally described as the NE $\frac{1}{4}$ except 4 acres, in Section 29, Township 14, Range 9, Howard County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$73,747
Improvements	\$ -0-
Total	\$73,747

3. That in Case Number 02A-222, the Taxpayer's agricultural real property legally described as the SE $\frac{1}{4}$ of Section 29, Township 14, Range 9, Howard County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$111,230
Improvements	\$ -0-
Total	\$111,230

4. That any request for relief by any Party not specifically granted by this order is denied.
5. That this decision, if no appeal is filed, shall be certified to the Howard County Treasurer, and the Howard County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9).
6. That this decision shall only be applicable to tax year 2002.
7. 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 24th day of September, 2003. The same were approved and confirmed by Commissioners Lore and Wickersham, and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §6).

Signed and sealed this 26th day of September, 2003.

SEAL

Mark P. Reynolds, Chair