

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

FROST FAMILY L.L.C., A	)	
Nebraska Limited Liability	)	CASE NO. 02A-235
Company,	)	02A-236
	)	02A-237
Appellant,	)	
	)	DOCKET ENTRY
vs.	)	AND ORDER
	)	AFFIRMING THE DECISION
HOWARD COUNTY BOARD OF	)	OF THE COUNTY
EQUALIZATION,	)	BOARD OF EQUALIZATION
	)	
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 September 25, 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.

The Frost Family Living Trust and its successor in interest, the Frost Family L.L.C., ("the Taxpayer") appeared at the hearing through F. Wayne Frost, Trustee of the Trust and a General Manager of the Limited Liability Company. 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 the Howard County, Nebraska ("the subject property").
2. The Howard County Assessor ("the Assessor") proposed valuing the subject property in Case Number 02A-235 in the amount of \$75,275 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-236 in the amount of \$169,016 for purposes of taxation as of January 1, 2002 ("the assessment date"). (E2).

4. The Assessor proposed valuing the subject property in Case Number 02A-237 in the amount of \$98,530 for purposes of taxation as of January 1, 2002 ("the assessment date"). (E3).
5. The Taxpayer timely protested the Assessor's proposed values. (E1; E2; E3).
6. The protests alleged that the proximity of a hog confinement feeding facility located adjacent to the subject properties adversely impacted actual or fair market value. (E1; E2; E3).
7. The Board denied each of the protests. (E1; E2; E3).
8. The Taxpayer timely appealed each of the Board's decisions to the Commission. (Appeal Form).
9. 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.
10. The Commission issued an Order for Hearing and Notice of Hearing on June 16, 2002. The Notice set the matter for a hearing on the merits of the appeal for September 25, 2003.
11. The Affidavit of Service included in the Commission's records establishes that copies of the Order and Notice were served on each of the Parties.
12. The value of the agricultural improvements (\$1,550) in Case Number 02A-237 are not at issue. (E20:1).

**B.**  
**SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS**

1. The subject property in Case Number 02A-235 is a tract of land approximately 158 acres in size. The tract of land is legally described as the NE $\frac{1}{4}$  in Section 8, Township 16, Range 10, Howard County, Nebraska. (E21:1). There are no improvements on this tract of land. (E18:1).
2. The subject property in Case Number 02A-236 is a tract of land approximately 160 acres in size. The tract of land is legally described as NE $\frac{1}{4}$  & Tract NW $\frac{1}{4}$  of Section 8, Township 16, Range 10 in Howard County, Nebraska. (E21:1). The tract of land is improved with a single-family residence and certain agricultural outbuildings. (E121:1).
3. The subject property in Case Number 02A-237 is a tract of land approximately 160 acres in size. The tract of land is legally described as SE $\frac{1}{4}$  in Section 4, Township 16, Range 10, in Howard County, Nebraska. (E20:1).
4. The Taxpayer testified that in his opinion the proximity of the hog confinement feeding facility, located 1.25 miles from the house on the subject property in Case Number 02A-236, reduced the actual or fair market value of all of the subject properties by between 40% and 50%.
5. The Taxpayer testified that the carrying capacity of the grassland component of all of the subject properties (approximately 322 acres) was reduced by 20% due to

particulate matter from the hog confinement facility settling onto the grass. The Taxpayer further testified that this particulate matter on the grass reduced foraging by grazing cattle. The Taxpayer concluded that this reduction in carrying capacity directly correlated to a 20% reduction in actual or fair market value of the grass land component of the subject properties.

6. The Taxpayer testified that the proximity of the hog confinement feeding facility also reduced the actual or fair market value of the irrigated land component of the subject properties in that odors from the facility adversely impacted activities on the irrigated land. The irrigated land component of the subject properties totals approximately 142 acres.
7. The Taxpayer attributed a 7% to 8% reduction in rents he received for the irrigated land to presence of the hog confinement feeding facility.
8. The Taxpayer adduced no evidence supporting his allegation that a 50% reduction in the assessed value of the residential and agricultural improvements was required.

**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 proximity of a hog confinement feeding facility may have an impact on actual or fair market value of agricultural and horticultural land.

5. The Taxpayer's uncorroborated testimony in these appeals concerning the correlation between a 20% reduction in carrying capacity and actual or fair market value does not rise to the level of clear and convincing evidence.
6. The Taxpayer's uncorroborated testimony concerning the correlation between odors emitted from the commercial hog confinement feeding facility and irrigated land values does not rise to the level of clear of convincing evidence.
7. A 7% to 8% difference in opinion of value does not satisfy the burden of proof imposed on a complaining Taxpayer.
8. The Taxpayer has failed to adduce sufficient clear and convincing evidence that the Board's decision was incorrect, and either unreasonable or arbitrary. The Board's 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-235, the Taxpayer's agricultural real property legally described as the NE $\frac{1}{4}$  of Section 5, Township 16, Range 10, in Howard County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$75,275
Improvements	\$ -0-
Total	\$75,275

3. That in Case Number 02A-236, the Taxpayer's agricultural real property legally described as the NE¼ & Tract NW¼ of Section 8, Township 16, Range 10, in Howard County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$118,631
Improvements	\$ 50,385
Total	\$169,016

4. That in Case Number 02A-237, the Taxpayer's agricultural real property legally described as the SE¼ of Section 5, Township 16, Range 10, in Howard County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$96,980
Improvements	\$ 1,550
Total	\$98,530

5. That any request for relief by any Party not specifically granted by this order is denied.
6. 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).

7. That this decision shall only be applicable to tax year 2002.
8. 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 25<sup>th</sup> 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 26<sup>th</sup> day of September, 2003.

SEAL



  
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Mark P. Reynolds, Chair