

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

RALPH WATTS TRUST,)	
)	
Appellant,)	CASE NO. 03A-111
)	03A-112
vs.)	03A-113
)	03A-114
POLK COUNTY BOARD OF)	
EQUALIZATION,)	FINDINGS AND ORDER
)	
Appellee.)	

Appearances:

For the Appellant: Dale Watts
7800 West Tropical Lane
Homosassa, FL 34448-5429

For the Appellee: Ronald Colling, Esq.
Polk County Attorney
P.O. Box 367
Osceola, NE 68651

Before: Commissioners Hans, Lore, Reynolds, and Wickersham.

**I.
STATEMENT OF THE CASE**

The Ralph Watts Trust ("the Taxpayer") owns four tracts of unimproved agricultural land in Polk County, Nebraska. The Polk County Assessor ("the Assessor"), for tax year 2003, determined 80% of the actual or fair market value of each of the Taxpayer's parcels of agricultural real property as of the January 1, 2003, assessment date as follows:

Case Number	Legal Desc.	Assessor's Determination of Value	Exhibit
03A-111	NW¼ of Section 31, Township 14, Range 1	\$199,380	7:1
03A-112	W 80 acres of the N¼NW¼ of Section 25, Township 14, Range 2	\$84,050	8:1
03A-113	WBN¼SW¼ & WBS¼NW¼ of Section 25, Township 14, Range 2	\$65,260	9:1
03A-114	SE ¼ NE ¼ & S ¼ SW ¼ NE ¼ of Section 26, Township 14, Range 2	\$62,300	10:1

The Taxpayer timely filed a protest of each determination and requested a reduction in the proposed values. (E1; E2; E3; E4). The Polk County Board of Equalization ("the Board") denied each of the Taxpayer's protests. (E1; E2; E3; E4).

The Taxpayer appealed each of the Board's decisions on August 28, 2003. (Appeal Form). The Commission served a Notice in Lieu of Summons on the Board on September 10, 2003, which the Board answered on October 9, 2003. The Commission consolidated the pending appeals for purposes of hearing, and thereafter issued an Order for Hearing and Notice of Hearing, and an Amended Order for Hearing and Amended Notice of Hearing. Copies of each Order were served on each of the Parties.

The Commission called the case for a hearing on the merits of the appeal in the City of Lincoln, Lancaster County, Nebraska, on February 11, 2004. Adelaine R. Watts, the Trustee for the Ralph Watts Trust, currently a resident of Florida, notified the

Commission in writing that she was unable to appear at the hearing due to illness. (E18:1). The Taxpayer also provided a doctor's statement as required by Title 442, Neb. Admin. Code, ch. 4, §011.01 (12/03). (E18:2). The Taxpayer designated her son, Dale Watts, as her representative for the hearing. (E18:1). The Board appeared through Ronald Colling, the Polk County Attorney.

II. ISSUES

The issues before the Commission are (1) whether the Board's decisions were incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's values were reasonable.

III. APPLICABLE LAW

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the Board's decisions were incorrect and (2) that the Board's decisions were either unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7)(Cum. Supp. 2002). 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 Taxpayer, once this initial burden has been satisfied, must then demonstrate by

clear and convincing evidence that the values as determined by the County were 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 Taxpayer adduced testimony that the 80% of the actual or fair market value for each property was the 2002 assessed value for that property in Case Number 03A-111 and 03A-114. The Taxpayer adduced no opinion of value in Case No. 03A-113, and did not dispute the value in Case No. 03A-112.
2. The Taxpayer adduced no evidence of assessed value of comparable properties in support of the requested reductions.
3. The Taxpayer adduce no evidence of sales of comparable properties in support of the requested reductions.

**V.
ANALYSIS**

The Taxpayer only adduced testimonial evidence that there was no basis for the increase over 2002 assessed values because no improvements had been made to the property. 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).

The Taxpayer adduced no evidence establishing that the Board's decision was incorrect and either unreasonable or arbitrary. The Commission must therefore affirm the Board's decisions as a matter of law. *Garvey Elevators, supra.* Neb. Rev. Stat. §77-5007(7) (2003 Supp.).

**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 action of the Board was incorrect and either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (2003 Supp.).
3. The Board is presumed to have faithfully performed its official duties in determining the actual or fair market value of the property. The Board is also presumed to have acted upon sufficient competent evidence to justify its decision. These presumptions remain until the Taxpayer presents competent evidence to the contrary. If the presumption is extinguished 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 on the Taxpayer. *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).

4. 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).
5. The Board's decisions must be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The orders of the Polk County Board of Equalization setting the assessed value of the subject properties for tax year 2003 are affirmed.
2. The Taxpayer's agricultural real property in Case Number 03A-111, consisting of a 162.76 acre tract of land legally described as the NW $\frac{1}{4}$ of Section 31, Township 14, Range 1, Polk County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$199,380
Improvements	\$ -0-
Total	\$199,380

3. The Taxpayer's agricultural real property in Case Number 03A-112, consisting of an 80-acre tract of land legally described as West 80 acres of the N $\frac{3}{4}$ NW $\frac{1}{4}$ of Section 25, Township 14, Range 2, Polk County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$84,050
Improvements	\$ -0-
Total	\$84,050

4. The Taxpayer's agricultural real property in Case Number 03A-113, consisting of an 80-acre tract of land legally described as WbN $\frac{1}{2}$ SW $\frac{1}{4}$ & WbS $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, Township 14, Range 2, Polk County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$65,260
Improvements	\$ -0-
Total	\$65,260

5. The Taxpayer's agricultural real property in Case Number 03A-114, consisting of a 70-acre tract of land legally described as SE $\frac{1}{4}$ NE $\frac{1}{4}$ & S $\frac{3}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26, Township 14, Range 2, Polk County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$62,300
Improvements	\$ -0-
Total	\$62,300

6. Any request for relief by any Party not specifically granted by this order is denied.
7. This decision, if no appeal is filed, shall be certified to the Polk County Treasurer, and the Polk County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (2003 Supp.).
8. This decision shall only be applicable to tax year 2003.
9. 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 11th day of February, 2004. 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) (2003 Supp.).

Signed and sealed this 11th day of February, 2004.

SEAL

Wm. R. Wickersham, Chair