

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

DENNIS R. URBANOVSKY,)	
)	
Appellant,)	CASE NO. 02A-194
)	
vs.)	DOCKET ENTRY
)	AND ORDER
GARFIELD COUNTY BOARD OF)	AFFIRMING THE DECISION
EQUALIZATION,)	OF THE COUNTY
)	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 the 12th day of June, 2003. The hearing was held in the City of Kearney, Buffalo County, Nebraska, pursuant to a Notice of Hearing issued the 6th day of March, 2003. Commissioners Hans, Wickersham, and Reynolds heard the appeal. Commissioner Wickersham, Vice-Chair, presided at the hearing.

Dennis R. Urbanovsky ("the Taxpayer") appeared personally at the hearing. The Taxpayer also appeared through counsel, Thomas S. Kruml, Esq.. 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 Garfield County, Nebraska ("the subject property").
2. The State Assessing Official for Garfield County ("the State Assessing Official") proposed valuing the subject property in the amount of \$71,005 for purposes of taxation as of January 1, 2002 ("the assessment date"). (E1).
3. The Taxpayer timely filed a protest of the proposed valuation and requested that the subject property be valued in the amount of \$50,100. (E1).
4. The protest alleged that similar grassland in Valley County carried a substantially lower per acre assessed value. (E1).

5. The Board granted the protest in part and determined that 80% of the actual or fair market value of the subject property as of the assessment date was \$66,025. (E1).
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 September 11, 2002. The Board filed an Answer out of time but with the consent of the Commission.
8. The Commission issued an Order for Hearing and Notice of Hearing on March 6, 2002. 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 property is a tract of land approximately 200 acres in size. The tract of land is legally described as the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of Section 33, Township 21, Range 14, Garfield County, Nebraska. (E3:32).
2. The tract of land is used exclusively for agricultural purposes. Agricultural land is to be valued at 80% of its actual or fair market value. Neb. Rev. Stat. §77-201(2) (Cum. Supp. 2002).
3. The entire tract of land is classified as "Grassland." (E3:34). "Grass Land" is defined as "the state and condition of the range based on what it is naturally capable

of producing. Grassland includes all types of grasses, permanent bromegrass, other introduced grasses, and native grasses used for grazing or mowed for hay." Title 350, Neb. Admin. Code, Ch. 14, §002.31 (03/01).

4. Grassland is subdivided by soil type, and each soil type is placed in a Land Valuation Group ("LVG"). Each LVG has a per acre assessed value. (E3:82).
5. The State Assessing Official determined that the subject property contained 1 acre of LVG 2G1VB soil; 9 acres of LVG 4G1VB; and 190 acres of LVG 4GVB. (E3:35).
6. The State Assessing Official testified that the "VB" designation represented a subclass of Grass which is authorized by law and by rule and regulation of the Property Tax Administrator.
7. The Board, after the Taxpayer's protest, reduced each LVG which contained Uly Soils by \$25 per acre. As a result of this adjustment, the Board determined that 80% of the actual or fair market value of the subject property was \$66,025. (E1; E3:33).
8. The State Assessing Official testified that she determined the per acre LVG values for agricultural land for tax year 2002 based primarily on 19 sales of unimproved agricultural sales which occurred in Garfield County between July 1, 1998 and June 30, 2001.

9. The State Assessing Official further testified that she valued the subject property in accordance with professionally accepted mass appraisal methodologies and in accordance with the Nebraska County Assessors Manual.
10. The State Assessing Official testified that based on her education, training, and experience, 80% of the actual or fair market value of the agricultural land was between \$66,025 and \$71,005.
11. The Taxpayer testified that Sale Number 9 as shown on Exhibit 3, page 29, was the most comparable property to his property. This property sold on April 8, 1999, for \$54,000. The sale included 180 acres of land, for a total of \$300 per acre. 80% of this amount would be \$270.
12. The Property Record File for this property was not made a part of the record. Each Party has an affirmative obligation to adduce copies of the Property Record File for any property offered as a comparable, and the documentation establishing value. *See, Order for Hearing, March 6, 2003, p. 3.* The Taxpayer failed to adduce the necessary copies. The Taxpayer also admitted that all properties were valued in the same manner in Garfield County, except those properties for which protests were filed.

13. The allegation that the Sale Property 9 constitutes evidence of value of the subject property for tax year 2002 is not persuasive.
14. The Taxpayer further testified that using the LVG values shown on Exhibit 3, page 79, which does not include the "VB" designation, and applying the values shown on that page to his property, results in an assessed value for his property substantially lower than that value as determined by the Board.
15. The Spot LVG Codes do not appear on Exhibit 3, page 79. This fact does not, however, establish that the value as determined by the Board was unreasonable or arbitrary.
16. Given the State Assessing Official's uncontroverted testimony that all agricultural real property in Garfield County is valued in the same manner, the Taxpayer's challenge concerning the Spot LVG values is not persuasive.
17. The Taxpayer testified that in his opinion the actual or fair market value of the subject property was \$300 to \$350 per acre. This is the only evidence of value adduced by the Taxpayer for 2002.
18. The Taxpayer adduced no evidence of "comparable" properties which were assessed at a lower level than the subject properties.

19. The Taxpayer adduced no evidence of sales of comparable properties.
20. The Taxpayer has not adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the Board.
21. The decision of the Board must therefore be affirmed.

**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 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. "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. "It is well established that the value of the opinion of an expert witness is no stronger than the facts upon which it is based." *Bottorf v. Clay Cty. Bd. Of Equal.*, 7 Neb. App. 162, 167, 580 N.W.2d 561, 565 (1998).
6. "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).
7. 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).
8. 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).

**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 affirmed.
2. That the Taxpayer's agricultural real property legally described as the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of Section 33, Township 21, Range 14, Garfield County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$66,025
Improvements	\$ -0-
Total	\$66,025
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 12th day of June, 2003. The same were approved and confirmed by Commissioners 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 19th day of June, 2003.

Mark P. Reynolds, Chair