

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

E. LAVERN OSEKA,	)	
	)	
Appellant,	)	CASE NO. 02R-87
	)	
vs.	)	DOCKET ENTRY
	)	AND ORDER
SHERMAN 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 10<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.

E. LaVern Oseka ("the Taxpayer") appeared personally at the hearing. The Sherman County Board of Equalization ("the Board") appeared through Curtis A. Sikyta, the Special Appointed Counsel. 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 near the Village of Loup City, Sherman County, Nebraska ("the subject property").
2. The State Assessing Official for Sherman County ("the State Assessing Official") proposed valuing the subject property in the amount of \$272,665 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 \$136,512. (E1).
4. The protest alleged that the subject property was overvalued. (E1).
5. The Board granted the protest in part. The Board, according to the Protest Form, determined that the actual or fair

market value of the subject property as of the assessment date was \$251,825. (E2:5). The Property Record File however, establishes that the assessed value as determined by the Board for the subject property for tax year 2002 was \$207,200. (E2:5).

6. 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 the September 11, 2002. The Board timely filed an Answer on September 18, 2002.
8. 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 10, 2003.

**B.**

**SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS**

1. The subject property is a tract of land legally described as the W½ of Section 8, Township 15, Range 14, Sherman County, Nebraska. (E2:4). The tract of land is improved with a single-family residence. The residence consists of a modular home which was built in 1999. The modular home was placed on a concrete block basement. (E2:4). The property is also improved with a garage, a wood deck, a metal shed, and an open slab porch. (E2:4). Sixty-two thousand dollars of the costs of construction are itemized on Exhibit 2, page

15. The Taxpayer also has added a "mud room" to the home and a metal shed or pole shed. The cost of these improvements are not included in this estimate.
2. The Taxpayer testified that the assessed value of the improvements should be based on his total costs. The Taxpayer adduced no other evidence of actual or fair market value of the improvement component of the subject property.
3. The Taxpayer also testified that Brome Grass had invaded the land component of the subject property and should be considered a noxious weed. The Taxpayer testified that the assessed value of the land component of the subject property should be reduced by fifty percent to account for this fact.
4. The Taxpayer adduced no evidence supporting his opinion that the value of the land component of the subject property should be reduced by fifty percent based on the presence of Brome Grass.
5. The Taxpayer has not adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the Board.
6. Therefore the decision of the Board must 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. "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).
5. 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).

**IV.  
ORDER**

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

1. That the order of the Sherman 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 W½ of Section 8, Township 15, Range 14,

Sherman County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$108,520
Improvements	\$ 98,680
Total	\$207,200

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 Sherman County Treasurer, and the Sherman County Assessor, 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 10<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, as amended by 2003 Neb. Laws, L.B. 291, §6).

Signed and sealed this 19<sup>th</sup> day of June, 2003.

*Mark P. Reynolds*, Chair