

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

HERMAN H. FRESE, JR.,)	CASE NO.
Appellant,)	02A-171 02A-172
vs.)	02A-173 02A-174
THURSTON COUNTY BOARD OF EQUALIZATION,)	DOCKET ENTRY AND ORDER
Appellee.)	AFFIRMING THE DECISION OF THE COUNTY 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 the 28th day of May, 2003. The hearing was held in the City of Norfolk, Madison County, Nebraska, pursuant to a Notice of Hearing issued the 21st day of February, 2003. Commissioners Hans, Lore, Wickersham, and Reynolds heard the appeal. Commissioner Wickersham, Vice-Chair, presided at the hearing.

Herman H. Frese, Jr., ("the Taxpayer") appeared personally at the hearing. The Thurston County Board of Equalization ("the Board") appeared through Albert Maul, the Thurston 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**

From the record, the Commission finds and determines as follows:

**A.
PROCEDURAL FINDINGS**

1. The Taxpayer is the owner of record of four tracts of agricultural real property located in Thurston County, Nebraska ("the subject properties").
 2. The Thurston County Assessor ("the Assessor") proposed valuing the subject properties for purposes of taxation in the amounts shown below as of January 1, 2002 ("the assessment date"). (E1; E2; E3; E4).
 3. The Taxpayer timely filed a protest of the proposed valuations and requested that the subject properties be valued in the amounts shown below. (E1; E2; E3; E4).
 4. The protest alleged that the assessed value for the agricultural land component for each of the properties exceeded 80% of actual or fair market value; and that the proposed values for the non-agricultural real property
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exceeded 100% of actual or fair market value. (E1; E2; E3; E4).

5. The Board denied the protest as to the agricultural land component for each of the subject properties. The Board, however, granted in part the protest concerning the non-agricultural real property. The Board fixed the assessed values for each component of the subject properties in those amounts set forth below. (E1; E2; E3; E4).

Case Number	Assessor	Taxpayer	Board	Exhibit
01A-171				1; 14
Land	\$ 17,270	\$ 13,575	\$ 17,270	
Improv.	\$ 0	\$ 0	\$ 0	
Total	\$ 17,270	\$ 13,575	\$ 17,270	
01A-172				2; 16
Land	\$ 38,875	\$ 29,730	\$ 38,875	
Improv.	\$ 21,885	\$ 0	\$ 13,395	
Total	\$ 60,760	\$ 29,730	\$ 52,270	
01A-173				3; 20
Land	\$ 22,185	\$ 17,315	\$ 22,185	
Improv.	\$ 160	\$ 0	\$ 160	
Total	\$ 22,345	\$ 17,315	\$ 22,345	
OIA-174				4; 22
Land	\$ 44,375	\$ 33,540	\$ 44,375	
Improv.	\$ 0	\$ 0	\$ 0	
Total	\$ 44,375	\$ 33,540	\$ 44,375	

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 timely filed an Answer on September 26, 2002.
8. The Commission issued an Order for Hearing and Notice of Hearing on February 21, 2003. The Notice set the matter for a hearing on the merits of the appeal for May 28, 2003.
9. Agricultural land is to be valued at 80% of actual or fair market value. Neb. Rev. Stat. X77-202(2) (Cum. Supp. 2002). Non-agricultural real property is to be valued at 100% of actual or fair market value. Neb. Rev. Stat. §77-202(1) (Cum. Supp. 2002).
10. The Board moved to dismiss the appeal at the close of the Taxpayer's case-in-chief for failure to prove a prima facie case.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The subject property in Case Number 02A-171 consists of a tract of land approximately 40 acres in size which is legally described as the NEI--4SE'4 of Section 20, Township 25, Range 9, Thurston County, Nebraska. (E14:1). There are no improvements on this tract of land. (E14:1).

2. The subject property in Case Number 02A-172 consists of a tract of land approximately 100 acres in size which is legally described as S1-~SE~4 and the N1-~SEI--4SW¹4 of Section 20, Township 25, Range 9, in Thurston County, Nebraska.
(E16:1). The tract of land is improved with a house and several agricultural outbuildings. The Board determined that the total value of these improvements was \$13,395.
(E16:1).
3. The subject property in Case Number 02A-173 consists of a tract of land approximately 40 acres in size which is legally described as the SW'-SW¹4 of Section 21, Township 25, Range 9, in Thurston County, Nebraska. (E20:1). The only improvements on this tract of land are an equipment shed, a grain bin and a utility building. These buildings have a total assessed value of \$160. (E20:4; E20:1).
4. The subject property in Case Number 02A-174 is a tract of land approximately 80 acres in size which is legally described as the W¹-~NW¹I-4 of Section 21, Township 25, Range 9, in Thurston County, Nebraska. (E22:1). There are no improvements to this tract of land. (E22:1).
5. That Taxpayer testified that the subject properties were, to his knowledge, unique.
6. The Taxpayer testified that in his opinion the actual or fair market value of the property in Case Number 02A-171 (a

40-acre tract) was \$15,000 as of the assessment date. The Taxpayer testified that the actual or fair market value of the property in Case Number 02A-172 (the 100-acre tract) was \$32,000. The Taxpayer testified that the actual or fair market value of the property in Case Number 02A-173 (a 40-acre tract) was \$19,000 as of the assessment date. The Taxpayer further testified that the actual or fair market value of the property in Case Number 02A-174 (the 80-acre tract) was \$36,000 to \$38,000.

7. The Taxpayer adduced no other evidence of the actual or fair market value of the agricultural land component of the subject properties as of the assessment date.
8. The Taxpayer adduced no other evidence of the actual or fair market value of the improvements to subject properties as of the assessment date.
9. The Taxpayer adduced no evidence to establish that the decision of the Board was incorrect, unreasonable or arbitrary.

**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 County 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).
6. A taxpayer who offers no evidence that the subject property is valued in excess of its actual value and who only produces evidence that is aimed at discrediting the valuation methods utilized by county assessor fails to meet his or her burden of proving that value of the property was not fairly and proportionately equalized or that valuation placed upon the property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).
7. "Based upon the applicable law, 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).

**IV.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the Board's Motion to Dismiss be, and hereby is, granted.
2. That the subject property shall be valued as follows:
 - a. That in Case Number 02A-171, the Taxpayer's agricultural real property legally described as the NEI-4SE¹- of Section 20, Township 25, Range 9, consisting of approximately 40 acres in Thurston County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$17,270
Improvements	\$ -0-
Total	\$17,270
 - b. That in Case Number 02A-172, the Taxpayer's agricultural real property legally described as the S1/2SE1/4 and N1/2SE1/4SW1/4 of Section 20, Township 25, Range 9, consisting of approximately 100 acres in Thurston County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$38,875
Improvements	\$13,395
Total	\$52,270

- c. That in Case Number 02A-173, the Taxpayer's agricultural real property legally described as the SW¹-SW¹- of Section 21, Township 25, Range 9, consisting of approximately 40 acres in Thurston County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$22,185
Improvements	\$ 160
Total	\$22,345

- d. That in Case Number 02A-174, the Taxpayer's agricultural real property legally described as the NE'-4NW'-4 of Section 21, Township 25, Range 9, in Thurston County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$44,375
Improvements	\$ -0-
Total	\$44,375

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 Thurston County Treasurer, and the Thurston 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 28th day of May, 2003. The same were approved and confirmed by Commissioners Lore and Reynolds, and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. X77-5005(5) (Cum. Supp. 2002).

Signed and sealed this 30th day of May, 2003.

SEAL





Mark P. Reynolds, Chair