

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

JAMES E. ISKE)	
)	
Appellant,)	CASE NO. 02C-111
)	
vs.)	FINDINGS AND ORDER
)	AFFIRMING THE DECISION OF THE
SARPY COUNTY BOARD OF)	SARPY COUNTY BOARD OF
EQUALIZATION,)	EQUALIZATION
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by James E. Iske to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the State Office Building in the City of Lincoln, Lancaster County, Nebraska, on April 2, 2003, pursuant to a Notice and Order for Hearing issued December 20, 2002. Commissioners Wickersham, Reynolds, and Lore were present. Commissioner Wickersham presided at the hearing.

James E. Iske ("the Taxpayer") appeared at the hearing. The Sarpy County Board of Equalization ("the County Board") appeared through counsel, Michael A. Smith, Esq., the Deputy County Attorney for Sarpy County, Nebraska. The Commission took statutory notice, received exhibits and heard testimony. The County Board moved for dismissal at the close of Taxpayer's case. The motion was denied.

The Commission is required by Neb. Rev. Stat. § 77-5018 (Cum. Supp. 2002) to state its final decision concerning an

appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order in this case follows.

**I.
STANDARD OF REVIEW**

The Taxpayer, in order to prevail, is required to demonstrate by clear and convincing evidence that the decision of the County Board was incorrect and arbitrary or unreasonable. Neb. Rev. Stat. § 77-5016(7) (Cum. Supp. 2002). The presumption created by the statute can be overcome if the appellant shows by clear and convincing evidence that the County Board of Equalization either failed to faithfully perform its official duties or that the County Board of Equalization 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). It is the Taxpayer's burden to overcome the presumption with clear and convincing evidence of more than a difference of opinion. *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 Board was unreasonable. *Garvey Elevators v. Adams County Bd.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

**II.
FINDINGS**

The Commission finds and determines that:

**A.
PROCEDURAL FINDINGS**

1. The Taxpayer is the owner of record of certain agricultural real property described in the appeal as E $\frac{1}{2}$ NE $\frac{1}{4}$ and Tax Lots 6A, 6B2 & 6C1, Section 29, Township 13 North, Range 13 East, 6th PM, Sarpy County, Nebraska ("the subject property").
2. The actual or fair market value of the subject property solely for agricultural uses as of January 1, 2002, ("the assessment date") placed on the assessment roll by the Sarpy County Assessor was:

Land value	\$115,736.00
Improvement value	<u>\$ 42,205.00</u>
Total value	<u><u>\$157,941.00.</u></u>
3. The Taxpayer timely protested that value to the County Board.
4. The County Board denied the protest. (E1:1)
5. The Taxpayer timely filed an appeal of that decision to the Commission.
6. The County Board was served with a Notice in Lieu of Summons, and duly answered that Summons.

7. A Notice and Order for Hearing issued on December 20, 2002, set a hearing of the Taxpayer's appeal for April 2, 2003, at 8:30 A.M. CST.
8. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Notice and Order for Hearing was served on all parties.
9. The issue stated by the Taxpayer on appeal to the Commission was that " The proposed valuations do not reflect the earning capacity of the property and are far in excess of the same." (Appeal form)

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The subject property, E $\frac{1}{2}$ NE $\frac{1}{4}$ and Tax Lots 6A, 6B2 & 6C1, Section 29, Township 13 North, Range 13 East, 6th PM, Sarpy County, Nebraska, is owned by the Taxpayer.
2. The Taxpayer testified that the objection that he raised on the appeal form filed with the Commission was the same objection he made to the County Board on the Form 422 and at a hearing on his protest before the County Board.
3. The County Board stipulated that the objection raised on appeal to the Commission was the same as the objection raised by the Taxpayer before the County Board.
4. The Taxpayer testified that all paper money was money without any intrinsic value.

5. The Taxpayer testified that gold as money has intrinsic value.
6. The subject property consists primarily of agricultural land. (E4:1).
7. Agricultural lands may be eligible for special or "greenbelt" valuation pursuant to *Neb. Rev. Stat. § 77-1344* (Cum. Supp. 2002).
8. Special or "greenbelt" values are "eighty percent of the value the land would have for agricultural or horticultural purposes or uses without regard to the actual value the land would have for other purposes or uses." *Neb. Rev. Stat. § 77-1343(6)* (Cum. Supp. 2002).
9. The agricultural land component of the subject property has been valued as "greenbelt," that is at 80% of its value solely for agricultural purposes or uses. (E4:4)
10. The Taxpayer testified that the value of property stated in paper money does not reflect its real value.
11. The Taxpayer testified that he did not object to the value placed on the subject property by the Assessor.
12. The Taxpayer commended the Assessor for using "greenbelt" to value the subject property.
13. The Taxpayer did not offer any evidence of a specific value for the subject property.

14. The Taxpayer did not offer any evidence of the earning capacity of the subject property or the relationship of earning capacity to actual or fair market value.
15. The Taxpayer has not adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the County Board.
16. Based on the entire record before it, the Commission finds and determines that the actual or fair market value of the improvements, home site, and roads and 80% of the value of the agricultural or horticultural land solely for agricultural or horticultural uses, as of the assessment date for the subject property for the tax year 2002 was:

Land value	\$115,736.00
Improvement value	<u>\$ 42,205.00</u>
Total value	<u>\$157,941.00.</u>
17. The assessed or taxable value of the subject property as of the assessment date determined by the County is supported by the evidence.
18. The decision of the County Board was correct and neither arbitrary nor unreasonable.
19. The decision of the County Board should be affirmed.

III.
CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.

2. The Taxpayer must adduce evidence establishing that the action of the County Board was incorrect and unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002). 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. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736 (2000).

4. The term "unreasonable" can be applied to a decision of an administrative agency only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447 (1999).
5. The 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).
6. "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).

7. "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).
8. Agricultural real property must be valued at 80% of its actual or fair market vlaue. Neb. Rev. Stat. § 77-201(2) (Cum. Supp. 2002).
9. Eligible agricultural or horticultural real property may be valued at 80% of its value solely for agricultural or horticultural uses. Neb. Rev. Stats. § 77-1343 to § 77-1345.01 (Cum Supp. 2002).

**IV.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the order of the Sarpy County Board of Equalization which determined the actual or fair market value of the improvements, home site, and roads on the subject property as of the assessment date, January 1, 2002, and 80% of the actual or fair market value of the agricultural and

horticultural land solely for agricultural or horticultural uses was:

Land value	\$115,736.00
Improvement value	<u>\$ 42,205.00</u>
Total value	<u>\$157,941.00</u>

is affirmed.

2. That this decision, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer, and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Cum. Supp. 2002).
3. That any request for relief, by any party, which is not specifically provided for by this order is denied.
4. That each party is to bear its own costs in this matter.
5. That this decision shall only be applicable to tax year 2002.

6. This order is effective for purposes of appeal May 7, 2003.

IT IS SO ORDERED.

Dated May 7, 2003.

Wm R. Wickersham, Vice-Chairman

Susan S. Lore, Commissioner

Mark P. Reynolds, Chairman