

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

GARY J. SASS, TRUSTEE,	)	
	)	
Appellant,	)	CASE NOS.
	)	
vs.	)	02A-224, 02A-225, 02A-226,
	)	02A-227, 02A-228, 02A-229,
WASHINGTON COUNTY BOARD OF	)	02A-230, 02A-231, 02A-232,
EQUALIZATION,	)	and 02A-233
	)	
Appellee	)	
	)	
and	)	
	)	
GARY SASS AND PATRICIA SASS,	)	CASE NO. 02A-234
	)	
Appellant,	)	
	)	<b>AMENDED</b>
vs.	)	FINDINGS AND ORDER
	)	PURSUANT TO STIPULATION OF THE
	)	PARTIES AT HEARING
WASHINGTON COUNTY BOARD OF	)	<b>(Correction of Numbers in</b>
EQUALIZATION,	)	<b>Findings of Fact and Order)</b>
	)	
Appellee.	)	

The above-captioned cases were called for a hearing on the merits of appeals by Gary J. Sass, Trustee, and Gary Sass and Patricia Sass to the Tax Equalization and Review Commission ("the Commission"). The hearing began in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on September 29, 2003, pursuant to an Amended Notice and Order for Hearing issued October 2, 2003. The hearing was recessed until October 16, 2003. Commissioners Wickersham, Reynolds, Lore, and Hans heard the appeals. Commissioner Wickersham presided at the hearing.

Gary J. Sass, Trustee, and Gary Sass and Patricia Sass ("the Taxpayer") appeared at the hearing. Jerry P. Herold, Esq., appeared as counsel for the Taxpayer.

The Washington County Board of Equalization ("the County Board") appeared through counsel, Edmond E. Talbot III, Esq., the County Attorney for Washington County, Nebraska.

The Commission took statutory notice.

During the course of the hearing the Parties entered into a stipulation.

Neb. Rev. Stat. §77-5018 (2002 Cum. Supp.) 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, based on the stipulation offered by the Parties, finds and determines as follows:

**I.  
FINDINGS OF FACT**

1. The Taxpayer is the owner of record of certain improved real property other than agricultural land and horticultural land, and agricultural land and horticultural land described in the appeals filed as:

Case No. 02A-224

NE¼ Section 33, Township 17 N., Range 11 E. 6th PM,  
Washington County, Nebraska;

Case No. 02A-225

NW $\frac{1}{4}$  Section 33, Township 17 N., Range 11 E., 6th PM,  
Washington County, Nebraska;

Case No. 02A-226

E $\frac{1}{2}$ SE $\frac{1}{4}$  Section 16, Township 17 N., Range 11 E., 6th PM,  
Washington County, Nebraska;

Case No. 02A-227

SW $\frac{1}{4}$ NE $\frac{1}{4}$  and Tax Lot 11 Section 16, Township 17 N., Range 11  
E., 6th PM, Washington County, Nebraska;

Case No. 02A-228

NE $\frac{1}{4}$ NE $\frac{1}{4}$  Section 16, Township 17 N., Range 11 E., 6th PM,  
Washington County, Nebraska;

Case No. 02A-229

NW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 16, Township 17 N., Range 11 E., 6th PM,  
Washington County, Nebraska;

Case No. 02A-230

Tax Lot 2 Section 25, Township 17 N., Range 10 E., 6th PM,  
Washington County, Nebraska;

Case No. 02A-231

NE $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$  and Tax Lot 10 Section 35, Township 17 N.,  
Range 11 E., 6th PM, Washington County;

Case No. 02A-232

Tax Lot 8 Section 28, Township 17 N., Range 11 E., 6th PM,  
Washington County, Nebraska; Nebraska;

Case No. 02A-233

W $\frac{1}{2}$ SW $\frac{1}{4}$  Section 28, Township 17 N., Range 11 E., 6th PM,  
Washington County, Nebraska;

Case No. 02A-234

W $\frac{1}{2}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$  Section 35, Township 17 N., Range 11 E., 6th  
PM, Washington County, Nebraska

all collectively referred to as ("the subject property").

2. The subject property was in part subject to special valuation and had both assessed values and recapture values assigned to land and improvements by the county assessor.
4. The Taxpayer timely protested those values to the County Board.
5. The County Board increased recapture values and did not adjust assessed values.
6. The Taxpayer timely filed appeals of County Board decisions to the Commission.
7. The County Board was served with Notices in Lieu of Summons, and duly answered those Notices.
8. The Taxpayer's appeals were consolidated for hearing by order of the Commission.
10. An Amended Notice and Order for Hearing issued on May 22, 2003, set a hearing of the Taxpayer's appeals for September 29, 2003, at 1:00 pm CDST.

11. 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.
12. The hearing commenced on September 29 was recessed until October 16, 2003.
13. The parties advised the commission upon resumption of the recessed hearing that a stipulation in full settlement of all appeals had been agreed upon. The stipulation was stated in principle with details to be furnished to the commission within 14 days.
14. The Taxpayer has adduced sufficient, clear and convincing evidence to overcome the statutory presumption in favor of the County Board.
15. Based on the entire record before it and the stipulation of the parties, the Commission finds and determines that recapture value for land subject to special valuation, and the actual or fair market value of improvements and land not subject to special valuation in each appeal as identified by its case file number is as follows for the tax year 2002:

Case No. 02A-224

Actual value special valuation land	\$474,300.00
Recapture value special valuation land	\$379,440.00
Actual value non agricultural land	\$ 14,400.00
Actual value road	-0-

Actual value outbuildings \$17,690.00;

Case No. 02A-225

Actual value special valuation land \$468,100.00

Recapture value special valuation land \$374,480.00

Actual value waste \$ 21,700.00

Recapture value waste \$ 17,360.00

Actual value road -0-;

Case No. 02A-226

Actual value special valuation land \$238,700.00

Recapture value special valuation land \$190,960.00

Actual value road -0- ;

Case No. 02A-227

Actual value special valuation land \$239,754.00

Recapture value special valuation land \$191,803.00

Actual value road -0- ;

Case No. 02A-228

Actual value special valuation land \$117,800.00

Recapture value special valuation land **\$ 94,240.00**

Actual value road -0- ;

Case No. 02A-229

Actual value special valuation land \$120,900.00

Recapture value special valuation land \$ 96,720.00

Actual value road -0- ;

Case No. 02A-230

Actual value special valuation land	\$238,700.00
Recapture value special valuation land	\$190,960.00
Actual value road	-0- ;

Case No. 02A-231

Actual value special valuation land	\$335,110.00
Recapture value special valuation land	\$268,088.00
Actual value road	-0- ;

Case No. 02A-232

Actual value special valuation land	\$207,669.00
Recapture value special valuation land	<b>\$166,135.20</b>
Actual value waste	\$ 6,200.00
Recapture value waste	\$ 4,960.00
Actual value road	-0- ;

Case No. 02A-233

Actual value special valuation land	\$204,600.00
Recapture value special valuation land	\$163,380.00
Actual value waste	\$ 40,300.00
Recapture value waste	\$ 32,240.00
Actual value road	-0- ;

Case No. 02A-234

Actual value special valuation land	\$474,300.00
Recapture value special valuation land	\$379,440.00
Actual value non agricultural land	\$ 37,200.00

Actual value road -0-

Actual value buildings \$135,455.00.

16. The recapture values of the subject property as of the assessment date determined by the County Board are not supported by the evidence.
17. The decisions of the County Board were incorrect, arbitrary and unreasonable.
18. The decisions of the County Board should be vacated and reversed.

**II.  
CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.
2. The Commission is required by Neb. Rev. Stat. §77-5016(7) (Supp. 2003) to affirm the decision of the County unless evidence is adduced establishing that the action of the County was unreasonable or arbitrary.
3. All taxable real property, with the exception of agricultural and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (2002 Cum. Supp.).
4. Agricultural and horticultural land shall be valued for taxation at eighty percent of its actual value. Neb. Rev. Stat. §77-201 (Cum. Supp. 2002).



5. Agricultural and horticultural land subject to special valuation is assessed at its special valuation. Neb. Rev. Stat. §77-1344 (Cum. Supp. 2002).
6. Special valuation is eighty percent of the value that the land would have for agricultural and horticultural purposes or uses without regard to actual value the land would have for other purposes or uses. Neb. Rev. Stat. §77-1343 (Cum. Supp. 2002).
7. "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).
8. "Ordinarily, a stipulation entered by the parties to a proceeding or by their attorneys within the scope of

authority for representation of the parties, establishes the fact or facts stipulated and binds the parties." *Ehlers v. Perry*, 242 Neb. 208, 218, 494 N.W.2d 325, 333 (1993) (Citations omitted).

9. As a matter of law the Taxpayer has met the burden of persuasion as required by *Garvey Elevators, Inc., supra*.

**III.  
ORDER**

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

1. That the decisions of the County Board are vacated and reversed.
2. That the motion of the parties for approval of their stipulation in settlement of all appeals is granted.
3. That recapture value for land subject to special valuation, and the actual or fair market value of improvements and land not subject to special valuation for the subject property described in each appeal is as follows for the tax year 2002:

Case No. 02A-224

NE¼ Section 33, Township 17 N., Range 11 E., 6th PM,  
Washington County, Nebraska,

Actual value special valuation land	\$474,300.00
Recapture value special valuation land	\$379,440.00
Actual value non agricultural land	\$ 14,400.00

Actual value road -0-  
Actual value outbuildings \$17,690.00;

Case No. 02A-225

NW<sup>1</sup>/<sub>4</sub> Section 33, Township 17 N., Range 11 E., 6th PM,  
Washington County, Nebraska;;

Actual value special valuation land \$468,100.00  
Recapture value special valuation land \$374,480.00  
Actual value waste \$ 21,700.00  
Recapture value waste \$ 17,360.00  
Actual value road -0-;

Case No. 02A-226

E<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub> Section 16, Township 17 N., Range 11 E., 6th PM,  
Washington County, Nebraska,

Actual value special valuation land \$238,700.00  
Recapture value special valuation land \$190,960.00  
Actual value road -0- ;

Case No. 02A-227

SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> and Tax Lot 11 Section 16, Township 17 N., Range 11  
E., 6th PM, Washington County, Nebraska,

Actual value special valuation land \$239,754.00  
Recapture value special valuation land **\$191,803.20**  
Actual value road -0- ;

Case No. 02A-228

NE $\frac{1}{4}$ NE $\frac{1}{4}$  Section 16, Township 17 N., Range 11 E., 6th PM,  
Washington County, Nebraska,

Actual value special valuation land \$117,800.00  
Recapture value special valuation land \$ 94,240.00  
Actual value road -0- ;

Case No. 02A-229

NW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 16, Township 17 N., Range 11 E., 6th PM,  
Washington County, Nebraska,

Actual value special valuation land \$120,900.00  
Recapture value special valuation land \$ 96,720.00  
Actual value road -0- ;

Case No. 02A-230

Tax Lot 2 Section 25, Township 17 N., Range 10 E., 6th PM,  
Washington County, Nebraska,

Actual value special valuation land \$238,700.00  
Recapture value special valuation land \$190,960.00  
Actual value road -0- ;

Case No. 02A-231

NE $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$  and Tax Lot 10 Section 35, Township 17 N.,  
Range 11 E., 6th PM, Washington County,

Actual value special valuation land \$335,110.00  
Recapture value special valuation land \$268,088.00  
Actual value road -0- ;

Case No. 02A-232

Tax Lot 8 Section 28, Township 17 N., Range 11 E., 6th PM,  
Washington County, Nebraska; Nebraska,

Actual value special valuation land	\$207,669.00
Recapture value special valuation land	\$166,135.20
Actual value waste	\$ 6,200.00
Recapture value waste	\$ 4,960.00
Actual value road	-0- ;

Case No. 02A-233

W $\frac{1}{2}$ SW $\frac{1}{4}$  Section 28, Township 17 N., Range 11 E., 6th PM,  
Washington County, Nebraska,

Actual value special valuation land	\$204,600.00
Recapture value special valuation land	<b>\$163,680.00</b>
Actual value waste	\$ 40,300.00
Recapture value waste	\$ 32,240.00
Actual value road	-0- ;

Case No. 02A-234

W $\frac{1}{2}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$  Section 35, Township 17 N., Range 11 E., 6th  
PM, Washington County, Nebraska,

Actual value special valuation land	\$474,300.00
Recapture value special valuation land	\$379,440.00
Actual value non agricultural land	\$ 37,200.00
Actual value road	-0-
Actual value buildings	\$135,455.00.

4. That this decision, if no appeal is timely filed, shall be certified to the Washington County Treasurer, and the Washington County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2002).
5. That any request for relief, by any party, which is not specifically provided for by this order is denied.
6. That each party is to bear its own costs in this matter.
7. That this decision shall only be applicable to tax year 2002.
8. This order is effective for purposes of appeal November 14, 2003.

**IT IS SO ORDERED.**

Dated: November 14, 2003.

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Wm. R. Wickersham, Vice-Chair

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Susan S. Lore, Commissioner

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Robert L. Hans, Commissioner

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Mark P. Reynolds, Chairman

**SEAL**