

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

THOMAS SEELY, ROBERT SEELY,)	
JUDY SEELY, and PEGGY LIPPS,)	
)	CASE NO. 02A-107
Appellants,)	
)	DOCKET ENTRY
vs.)	AND ORDER
)	VACATING THE DECISION
HALL COUNTY BOARD OF)	OF THE COUNTY
EQUALIZATION,)	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 10th day of September, 2003. The hearing was held in the City of Kearney, Buffalo County, Nebraska, pursuant to a Notice of Hearing issued June 13, 2003. Commissioners Hans, Lore, Wickersham, and Reynolds heard the appeal. Commissioner Reynolds, Chair, presided at the hearing.

Thomas Seely, Robert Seely, Judy Seely, Peggy Lipps, ("the Taxpayer") each own an undivided one-quarter interest in the subject property. Robert Seely appeared at the hearing before the Commission. The Hall County Board of Equalization ("the Board") appeared through Jerom E. Janulewicz, the Hall 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.
APPLICABLE LAW

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 Hall County, Nebraska ("the subject property"). (E22:1).
2. The Hall County Assessor ("the Assessor") proposed valuing the subject property in the amount of \$99,476 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 \$75,981. (E1).
4. The protest alleged that the proposed value exceeded that amount authorized by law. (E1).

5. The Board granted the protest in part and determined that the actual or fair market value of the non-agricultural component of the subject property was \$29,203 as of the assessment date, and that 80% of the actual or fair market value of the agricultural land component of the subject property was \$66,942 as of the assessment date. The total assessed value as determined by the Board was \$96,145.
(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 the September 4, 2002. The Board timely filed an Answer on September 18, 2002.
8. The Commission issued an Order for Hearing and Notice of Hearing on June 13, 2003. The Commission thereafter issued an Amended Notice of Hearing which set the matter for a hearing on the merits of the appeal for September 10, 2003.
9. The Board objected to the Commission's receipt of Exhibits 3, 4, 5, and 6. The Commission sustained the objection since to receive the Exhibits would violate the Board's statutory right to cross-examine witnesses of the opposing party. Neb. Rev. Stat. §77-5016(4) (Cum. Supp. 2002).

B.
SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The subject property is a tract of land 80-acres in size legally described as the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 23, Township 9, Range 11, Hall County, Nebraska. (E22:4). The tract of land is improved with a single family residence and several sheds which are the property of the tenant. (E22:3).
2. Three acres of the tract of land are "roads" and have no value. One acre is dedicated to a home site, and is valued at \$15,880. (E22:4).
3. The house on the property is occupied by three individuals who are related to the Taxpayer. These individuals don't pay rent.
4. The Taxpayer's wife testified that in her opinion the actual or fair market value of the property was \$80,000.
5. The Assessor testified that the value of one outbuilding (\$384) should be removed from the improvement component of the subject property.

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 Board was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp.2002, as amended by 2003 Neb. Laws, L.B. 291, §9).

3. 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. The Taxpayer has adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the Board to the extent that the value of the outbuilding (\$384) should be removed. The Board's decision must be vacated and reversed as to this component of the subject property.
5. The Taxpayer has failed to overcome the statutory presumption in favor of the Board as to the land component

of the subject property. The Board's decision must be affirmed as to this component of the subject property.

**IV.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That Hall County Board of Equalization's Order setting the assessed value of the subject property for tax year 2002 is vacated and reversed.
2. That the Taxpayer's agricultural real property legally described as W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 23, Township 9, Range 11, in Hall County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$82,822
Improvements	\$12,939
Total	\$95,761
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 Hall County Treasurer, and the Hall 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 Wickersham made and entered the above and foregoing Findings and Orders in this appeal on the 10th day of September, 2003. The same were approved and confirmed by Commissioners Hans and Lore, 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 12th day of September, 2003.

SEAL

Mark P. Reynolds, Chair