

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

RONALD J. VESKERNA)	
)	
Appellant,)	CASE NO. 02A-168
)	
vs.)	FINDINGS AND ORDER
)	REVERSING THE DECISION OF THE
MADISON COUNTY BOARD OF)	MADISON COUNTY BOARD OF
EQUALIZATION,)	EQUALIZATION
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Ronald J. Veskerna to the Tax Equalization and Review Commission ("the Commission"). The hearing was held at Conference Room C, Holiday Inn Express, 920 South 20th St., on May 28, 2003, in the City of Norfolk, Madison County Nebraska. Commissioners Wickersham, Reynolds, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Ronald J. Veskerna and Susanna Veskerna ("the Taxpayer") appeared at the hearing. The Madison County Board of Equalization ("the County Board") appeared through counsel, Joel E. Carlson, Esq., the Deputy County Attorney for Madison County, Nebraska. The Commission took statutory notice, received exhibits and heard testimony.

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 of the Commission in this case is as follows.

I.
STANDARD OF REVIEW

The appellant, 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, as amended Neb. Laws, L.B. 291, §9). The presumption created by the statute can be overcome if the Taxpayer shows by clear and convincing evidence that the County Board either failed to faithfully perform its official duties or that the County Board failed to act upon sufficient competent evidence in making its decision. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 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, Inc v. Adams County Bd. of Equalization* , 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 Board was unreasonable. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 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 SW¼, Section 25, Township 23, Range 2 East of the 6th PM, Madison County, Nebraska ("the subject property").
2. Eighty percent of actual or fair market value as of January 1, 2002, ("the assessment date") for the agricultural and horticultural land and the actual or fair market value of the improvements on the subject property, placed on the assessment roll by the Madison County Assessor was:

Ag Land 145.1 acres	\$141,988.00
Shelterbelt	\$ 165.00
Road	-0-
Home Site	\$ 4,790.00
Farm Site	\$ 2,903.00
Improvement value	<u>\$ 20,668.00</u>
Total value	<u>\$170,514.00.</u>

3. The Taxpayer timely protested that value to the County Board. The Taxpayer proposed the following value:

Land value	\$139,332.00
Improvement value	<u>\$ 20,668.00</u>
Total value	<u>\$160,000.00.</u>

4. The County Board denied the protest. (E: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 February 21, 2003, set a hearing of the Taxpayer's appeal for May 28, 2003, at 10:00 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.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The subject property, SW $\frac{1}{4}$, Section 25, Township 23, Range 2 East of the 6th PM, Madison County, Nebraska, is owned by the Taxpayer. (E3:1). The subject property is in Agricultural Market Area 1 of Madison County. (E3:2).
2. The subject property consists of 145.1 acres of agricultural and horticultural lands, a 2.5 acre home site, 2.9 acres for a farm site, 5.5 acres of shelterbelt, and 4 acres of roads, a total of 160 acres, with improvements. (E3:2)

3. Valuation of the improvements is not at issue in this appeal. (Appeal form, E1:1).
4. The agricultural and horticultural land component of the subject property consists primarily of 141.4 acres of dry crop land. (E3:2).
5. Taxpayer's first comparable property is a 90-acre tract of land consisting of 18.9 acres of dry crop land, 66.8 acres of irrigated crop farm land, a 1 acre home site, 1.1 acres of roads, and 2.2 acres for a farm site. (E4:3)
6. Taxpayer's second comparable property is a 160-acre tract of land consisting of 6.7 acres of dry crop land, 38.7 acres of grass land, 105.9 acres of irrigated crop land, 4 acres of roads, and 4.7 acres of shelterbelt. (E5:3)
7. Taxpayer's third comparable property is a 146.64-acre tract of land consisting of 16.3 acres of dry crop land, 5.7 acres of grass land, .3 acres of grass land with timber, 116.74 acres of irrigated crop land, 2.9 acres of roads, and 4.7 acres of shelterbelt. (E6:2).
8. These three "comparable properties" consist of primarily irrigated crop land while the subject property is primarily dry crop land.
9. Taxpayer's fourth "comparable" property is a 157.5-acre tract of land consisting of 105.8 acres of dry crop land, 23

- acres of grass, 2.4 acres of grass with timber, 3.5 acres of roads, and 22.8 acres of shelterbelt. (E7:2)
10. Eighty-six percent of the agricultural land of the subject property is classified as 3D1 land. $(124.6 \div 145.10 = 85.87\%)$. (E3:2) Forty-two percent of the agricultural land in Taxpayer's fourth comparable is 3D1 land. $(55.6 \div 131.2 = 42.37\%)$
 11. Taxpayer's fifth comparable property is a 156-acre tract of land consisting of 137.95 acres of dry crop land, a 1 acre homesite, 3.95 acres of roads, and 13.1 acres for a farm site. (E8:2)
 12. The agricultural and horticultural land described in Exhibit 8 was sold in October of 2002, and was not recorded until 2003. (E8:1).
 13. The Board's determination of value is derived from a spreadsheet showing sales of unimproved agricultural and horticultural land in Madison County for the three year period July 6, 1998, through April 27, 2001. (E10:1, 2, 3)
 14. The subject property is predominantly 3D1 dry land. Exhibit 10 does not contain a single sale of majority land use 3D1.
 15. The County Board adduced no other evidence of value.

**III.
CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.
2. A taxpayer using comparing properties to establish the value of the subject property must use properties which are truly comparable to the subject property. *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998).
3. Comparable properties share similar land use, physical characteristics (size, shape, and topography), and location. *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 70 - 76.
4. Taxpayer's first four comparables are of a different majority land use or a different Land Valuation Group. Those properties are not truly comparable to the subject property.
5. Taxpayer's fifth comparable, standing alone, is too remote in time to provide credible evidence of the value of the subject property as of the assessment date.
6. The County Board's determination of value is not based on any sales of majority land use 3D1 agricultural land.
7. The Board's decision is, accordingly, not based on sufficient competent evidence. The County Board's valuation decision is also unreasonable under these circumstances.

8. An owner who is familiar with his property and knows its worth is competent to provide evidence of value. *U. S. Ecology v. Boyd County Bd. Of Equalization*, 256 Neb. 7, 16, 588 N.W.2d 575, 581, (1999). In the absence of any other competent or credible evidence from the County Board, the most credible evidence of value is the Taxpayer's requested value of \$160,000 for the subject property. (E1).
9. The County Board's decision is incorrect, and both unreasonable and arbitrary. That decision must be vacated and reversed.

**IV.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the order of the County Board determining eighty percent of the actual or fair market value of the agricultural and horticultural land and the actual or fair market value of the improvements for the subject property as of the assessment date, January 1, 2002, is vacated and reversed.
2. That the Taxpayer's real property described in the appeal as SW¹/₄, Section 25, Township 23, Range 2 East of the 6th PM, Madison County, Nebraska, shall be valued as follows for tax 2002:

Land	\$139,332.00
Improvements	<u>\$ 20,668.00</u>
Total	<u>\$160,000.00.</u>

3. That this decision, if no appeal is timely filed, shall be certified to the Madison County Treasurer, and the Madison County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2002).
4. That any request for relief, by any party, which is not specifically provided for by this order is denied.
5. That each party is to bear its own costs in this matter.
6. That this decision shall only be applicable to tax year 2002.
7. This order is effective for purposes of appeal September 10, 2003.

IT IS SO ORDERED.

Dated this 10th day of September, 2003.

Wm. R. Wickersham, Vice-Chair

Susan S. Lore, Commissioner

Robert L. Hans, Commissioner

Mark P. Reynolds, Chair

SEAL