

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

R & J BAHENSKY FARMS LIMITED)	CASE NO.
PARTNERSHIP, A Nebraska)	
Limited Partnership, and)	02A-147 02A-150 02A-153
)	02A-148 02A-151 02A-154
RONALD G. BAHENSKY and)	02A-149 02A-152 02A-155
JEANETTE J. BAHENSKY,)	
)	DOCKET ENTRY
Appellants,)	AND ORDER
)	REVERSING THE DECISION
vs.)	OF THE COUNTY
)	BOARD OF EQUALIZATION
HOWARD COUNTY 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 September 24, 2003. The hearing was held in the City of Kearney, Buffalo County, Nebraska, pursuant to a Notice of Hearing issued June 16, 2003. Commissioners Hans, Lore, Wickersham, and Reynolds heard the appeal. Commissioner Reynolds, Chair, presided at the hearing.

Ronald G. Bahensky ("the Taxpayer") appeared personally on his own behalf. Mr. Bahensky also appeared on behalf of R & J Bahensky Farms Limited Partnership (also "the Taxpayer") in his capacity as General Partner. The Taxpayer also appeared through counsel, Arend R. Baack, Esq. The Howard County Board of Equalization ("the Board") appeared through Karin L. Noakes, the Howard 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**

1. Agricultural land, for purposes of real property taxation, is to be valued at 80% of actual or fair market value. Neb. Rev. Stat. §77-201(2) (Cum. Supp. 2002).
2. The acceptable range for the median of the Assessment to Sales Ratio for agricultural land is 74% to 80%. Neb. Rev. Stat. §77-5023(Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §13).

3. A Taxpayer may appeal a decision of a county board of equalization denying a protest to the Tax Equalization and Review Commission. Neb. Rev. Stat. §77-1510.(Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §3).
4. The Commission only has jurisdiction over those issues raised before the county board of equalization, and those issues sufficiently related in content and context to be deemed the same question. *Arcadian Fertilizer v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 505, 583 N.W.2d 353, 357 (1998).
5. The Taxpayer 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).
6. 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).
7. 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 nine tracts of agricultural real property located in Howard County, Nebraska ("the subject property").
2. The Howard County Assessor ("the Assessor") proposed valuing the subject property for purposes of taxation in the amounts shown below. These proposed values were as of the January 1, 2002 ("the assessment date"). (Case Nos. 02A-147 - 02A-153: E1 - E7; Case Nos. 02A-154 - 02A-155: E1 - E2).
3. The Taxpayer timely protested the proposed values and requested that those values be reduced. (Case Nos. 02A-147 - 153: E1 - E7; Case Nos. 02A-154 - 02A-155: E1 - E2).
4. The protests alleged that the proposed values exceeded 80% of actual or fair market value. The protests also alleged that the proposed values were not equalized with comparable

properties. (Case Nos. 02A-147 - 02A-153: E1 - E7; Case Nos. 02A-154 - 02A-155: E1 - E2).

5. The Board denied each of the protests. (Case No. 02A-147 - 02A-153: E1 - E7; Case Nos. 02A-154 - 02A-155: E1 - E2).

Case No.	Assessor's Proposed Value	Taxpayer's Requested Value	Board's Value	Exhibit
02A-147	\$ 145,390	\$ 121,358	\$ 145,390	1
02A-148	\$ 144,374	\$ 120,867	\$ 144,374	2
02A-149	\$ 199,932	\$ 144,281	\$ 199,932	3
02A-150	\$ 171,043	\$ 122,000	\$ 171,043	4
02A-151	\$ 152,637	\$ 107,431	\$ 152,637	5
02A-152	\$ 152,508	\$ 106,995	\$ 152,508	6
02A-153	\$ 88,163	\$ 71,086	\$ 88,163	7
02A-154	\$ 128,011	\$ 89,743	\$ 128,011	1
02A-155	\$ 35,679	\$ 29,941	\$ 35,679	2

6. Thereafter, the Taxpayer timely filed appeals of the Board's decisions to the Commission. (Appeal Form).
7. The Commission served Notices in Lieu of Summons on the Board on September 4, 2002. The Board timely filed Answers on September 23, 2002.
8. The Commission issued an Order for Hearing and Notice of Hearing on June 16, 2003. The Notice set the matter for a hearing on the merits of the appeal for September, 2003.
9. The Affidavit of Service included in the Commission's records establishes that copies of the Order and Notice was served on each of the Parties.

10. The Commission consolidated the Taxpayer's nine appeals for purposes of hearing.
11. The Taxpayer's protests alleged that the proposed values exceeded market value and were not equalized with comparable properties. (Case Nos. 02A-147 - 02A-153: E1 - E7; Case Nos. 02A-154 - 02A-155: E1 - E2).
12. The value of the improvements in case Number 02A-150 (\$17,957) is not at issue. (Case Nos. 02A-147 - 02A-153: E4; E32:1).

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The subject property in Case Number 02A-147 is a tract of land approximately 319 acres in size. The tract of land is legally described as the E $\frac{1}{2}$ of Section 5, Township 14, Range 9, Howard County, Nebraska. (E37:1). The Taxpayer described this tract of land as sandhill pasture. The Taxpayer requested an equalized value of \$121,358 for this property. (E29:2).
2. The subject property in Case Number 02A-148 is a tract of land approximately 318 acres in size. The tract of land is legally described as the W $\frac{1}{2}$ Excluding 2 acre tract in SW $\frac{1}{4}$ of Section 5, Township 14, Range 9, Howard County, Nebraska. (E38). The Taxpayer described this tract of land as

sandhill pasture. The Taxpayer requested an equalized value of \$120,867 for this property. (E30:2).

3. The subject property in Case Number 02A-149 is a tract of land approximately 158.3 acres in size. The tract of land is legally described as the NW $\frac{1}{4}$ Except 1.17 acres State, in Section 14, Township 14, Range 9, Howard County, Nebraska. (E39:1). The Taxpayer described this tract of land as irrigated ground with two irrigation wells used in a gravity irrigation system. The Taxpayer requested an equalized value of \$144,281 for this property. (E31:2).
4. The subject property in Case Number 02A-150 is a tract of land approximately 160 acres in size. The tract of land is legally described as the NW $\frac{1}{4}$ of Section 11, Township 14, Range 9, Howard County, Nebraska. (E40:1). The Taxpayer described this property as irrigated ground with a building site. The Taxpayer requested an equalized value of \$122,000 for this property. (E32:2).
5. The subject property in Case Number 02A-151 is a tract of land approximately 150 acres in size. The tract of land is legally described as the SW $\frac{1}{4}$ of Section 23, Township 14, Range 9, Howard County, Nebraska. (E41:1). The Taxpayer described this property as pivot irrigated ground. The Taxpayer's requested an equalized value of \$107,431 for this property. (E33:2).

6. The subject property in Case Number 02A-152 is a tract of land approximately 157 acres in size. The tract of land is legally described as the NW $\frac{1}{4}$ exc 3.01 acre tract, in Section 15, Township 14, Range 9, Howard County, Nebraska. (E42:1). The Taxpayer described this property as gravity irrigated with two wells and a small pivot irrigating a small part of the land, and 10 acres of shelterbelt. The Taxpayer requested an equalized value of \$106,995 for this property. (E34:2).
7. The subject property in Case Number 02A-153 is a tract of land approximately 80 acres in size. The tract of land is legally described as the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 10, Township 14, Range 9, Howard County, Nebraska. (E43:1). The Taxpayer described this property as gravity irrigated land. The Taxpayer requested an equalized value of \$62,141 (correcting for mathematical errors) for this property. (E35:2).
8. The subject property in Case Number 02A-154 is a tract of land approximately 120 acres in size. The tract of land is legally described as the NE $\frac{1}{4}$ NE $\frac{1}{4}$ & S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 15, Township 14, Range 9, Howard County, Nebraska. (Case No. 02A-154: E27:1). The Taxpayer described this property as gravity irrigated land. The Taxpayer requested an equalized value of \$89,743 for this property. (E24:2).

9. The subject property in Case Number 02A-155 is a tract of land approximately 80 acres in size. The tract of land is legally described as the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 7, Township 14, Range 9, Howard County, Nebraska. (Case No. 02A-154: E28:1). The Taxpayer described this property as sandhill pasture. The Taxpayer requested an equalized value of \$29,941 for this property. (E25:2).
10. The uncontroverted evidence establishes that the assessed values of the subject properties were not equalized with comparable properties for tax year 2002.

**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 incorrect and either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp.2002, as amended by 2003 Neb. Laws, L.B. 291, §9).
3. The Board's decision is presumed to be correct. The Board is presumed to have faithfully performed its official duties. The Board is also presumed to have acted upon sufficient competent evidence to justify its action. These presumptions remain in effect until there is competent

evidence to the contrary presented. If such evidence is presented, the presumption disappears. From that point on, the reasonableness of the Board's value is one of fact based upon all the evidence presented. The taxpayer bears the burden of showing the Board's value to be unreasonable.

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 Taxpayer has adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the Board. The Board's decision was incorrect, and both unreasonable and arbitrary. That decision must be vacated and reversed.
6. A taxpayer whose property assessments are not equalized with comparable properties has the right to have those assessments reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984).

**IV.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the order of the Howard County Board of Equalization setting the assessed values of the subject properties for tax year 2002 is vacated and reversed.
2. That in Case Number 02A-147 the Taxpayer's agricultural real property legally described as E½ of Section 5, Township 14, Range 9, Howard County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$121,358
Improvements	\$ -0-
Total	\$121,358

3. That in Case Number 02A-148 the Taxpayer's agricultural real property legally described as the W½ of Section 5, Township 14, Range 9, Howard County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$120,867
Improvements	\$ -0-
Total	\$120,867

4. That in Case Number 02A-149 the Taxpayer's agricultural real property legally described as the NW¼ EXC 1.17 ACRE STATE, in Section 14, Township 14, Range 9, Howard County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$144,281
Improvements	\$ -0-
Total	\$144,281

5. That in Case Number 02A-150 the Taxpayer's agricultural real property legally described as NW¼ of Section 11, Township 14, Range 9, Howard County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$122,000
Improvements	\$ 17,957
Total	\$139,957

6. That in Case Number 02A-151 the Taxpayer's agricultural real property legally described as the SW¼ of Section 23, Township 14, Range 9, Howard County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$107,431
Improvements	\$ -0-
Total	\$107,431

7. That in Case Number 02A-152 the Taxpayer's agricultural real property legally described as the NW¼ of Section 15, Township 14, Range 9, Howard County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$106,995
Improvements	\$ -0-
Total	\$106,995

8. That in Case Number 02A-153 the Taxpayer's agricultural real property legally described as the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 10, Township 14, Range 9, Howard County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$62,141
Improvements	\$ -0-
Total	\$62,141

9. That in Case Number 02A-154 the Taxpayer's agricultural real property legally described as the NE $\frac{1}{4}$ NE $\frac{1}{4}$ & S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 15, Township 14, Range 9, Howard County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$89,743
Improvements	\$ -0-
Total	\$89,743

10. That in Case Number 02A-155 the Taxpayer's agricultural real property legally described as W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 7, Township 14, Range 9, Howard County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$29,941
Improvements	\$ -0-
Total	\$29,941

11. That this decision, if no appeal is filed, shall be certified to the Howard County Treasurer, and the Howard County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7)

(Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9).

12. That this decision shall only be applicable to tax year 2002.

13. That each party is to bear its own costs in this matter.

IT IS SO ORDERED.

I certify that Commissioner Lore made and entered the above and foregoing Findings and Orders in this appeal on the 24th day of September, 2003. The same were approved and confirmed by Commissioners Hans and Wickersham in all but case Number 02A-153, 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). In Case Number 02A-153, Commissioner Hans dissented concerning the relief granted by the Order. Commissioners Wickersham and Reynolds approved and confirmed the findings of fact, conclusions of law and the final order in that appeal. The same are 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 26th day of September, 2003.

SEAL

Mark P. Reynolds, Chair