

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

BRADLEY C. AUGUSTIN,)	
)	
Appellant,)	CASE NO. 02A-20
)	
vs.)	DOCKET ENTRY
)	AND ORDER
ADAMS COUNTY BOARD OF)	AFFIRMING THE DECISION
EQUALIZATION,)	OF THE 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 11, 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.

Bradley C. Augustin ("the Taxpayer") appeared personally at the hearing. The Adams County Board of Equalization ("the Board") appeared through Charles A. Hamilton, the Adams 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 Adams County, Nebraska ("the subject property").
2. The Adams County Assessor ("the Assessor") proposed valuing the subject property in the amount of \$201,180 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 \$152,897. (E1).
4. The protest alleged that proposed value exceeded 80% of actual or fair market value. (E1).
5. The Board denied the protest. (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 August 12, 2002. The Board, with leave of the Commission, filed an Answer out of time on November 27, 2002.
8. The Commission issued an Order for Hearing and Notice of Hearing on June 13, 2003. The Notice set the matter for a hearing on the merits of the appeal for September 11, 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.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The subject property is a tract of agricultural land approximately 154.65 acres in size legally described as N $\frac{1}{2}$ NW $\frac{1}{4}$ & SW $\frac{1}{4}$ NW $\frac{1}{4}$ & NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, Township 8 North, Range 12 West of the 6th P.M. (E8; E11).
2. The Taxpayer acquired the subject property and an additional tract of land in 1999 for \$246,000.
3. The Taxpayer alleges that the Commission's decision for tax year 1999 should govern this proceeding.
4. The subject property has no well, but water is applied to the land from an adjoining tract of land owned by the

Taxpayer's uncle. One portion of the tract has water periodically applied from a re-use pit which collects rain and melted snow. The Taxpayer therefore alleges the property should be valued as dry land.

5. The NW¹/₄ of the subject property is separated from the SW¹/₄ by the Burlington Northern Railroad tracks. (E3:1). The Taxpayer alleges that this separation adversely impacts actual or fair market value.
6. The Taxpayer adduced two "comparable" properties in support of his opinion of value. Taxpayer's first "comparable" (E6) is a 146.28 acre tract of land which sold January 20, 2003. (E6:3). The Taxpayer failed to adduce the Property Record Card for this property as required by the Commission's Order for Hearing.
7. Taxpayer's second "comparable" is a 145.50 acre tract of land which sold on August 15, 2001. (E7:3). The Taxpayer failed to adduce the Property Record Card for this property as required by the Commission's Order for Hearing.
8. The Taxpayer testified that his opinion of 80% of actual or fair market value was \$152,897.

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. There is a presumption that a board of equalization faithfully performed its official duties in making an assessment and that it 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).
4. The burden of persuasion imposed on the complaining taxpayer in an appeal to the Commission is not met by showing a mere difference of opinion unless clear and convincing evidence establishes that the value placed on the 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).

5. The prior year's assessment is not relevant to the subsequent year's valuation. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988). The Commission's decision concerning the assessed value of the subject property for tax year 1999 is not relevant to the 2002 assessed value.
6. The rules and regulations of the Department of Property Assessment and Taxation define "irrigated land" as agricultural land to which water is applied. 350 Neb. Admin. Code ch. 14, §002.37C. There is no requirement that the water applied be from a well located on the property. The subject property is therefore properly classified as "irrigated land."
7. When considering the land component of real property, "comparable" properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location. *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 70 - 76.

8. When comparing assessed values of other properties with the subject property to determine actual value the properties must be truly comparable. *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998).
9. The record contains no evidence of the Land Valuation Groups which are present on the Taxpayer's "comparable" properties. The Commission cannot conclude that the properties offered as "comparables" by the Taxpayer are truly comparable to the subject property.
10. The Taxpayer's first comparable sold in 2003, twelve months after the assessment date. (E6:3). This sale, standing alone, is not relevant to the value of the subject property as of the January 1, 2002, assessment date.
11. The Taxpayer has not adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the Board.
12. The Board's decision must therefore be affirmed.

**IV.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the order of the Adams County Board of Equalization setting the assessed value of the subject property for tax year 2002 is affirmed.

2. That the Taxpayer's agricultural real property legally described as N $\frac{1}{2}$ NW $\frac{1}{4}$ & SW $\frac{1}{4}$ NW $\frac{1}{4}$ & NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, Township 8 North, Range 12 West of the 6th P.M., Adams County, Nebraska, shall be valued as follows for tax year 2002:

Land \$201,180

Improvements \$ -0-

Total \$201,180

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 Adams County Treasurer, and the Adams 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 11th 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