

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

PEGGY L. MEESKE,)	
)	
Appellant,)	CASE NO. 02R-136
)	
vs.)	FINDINGS AND ORDER
)	AFFIRMING THE DECISION OF THE
CHASE COUNTY BOARD OF)	CHASE COUNTY BOARD OF
EQUALIZATION,)	EQUALIZATION
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Peggy L. Meeske to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Meeting Room, of the Hampton Inn, 200 Platte Oasis Parkway, in the City of North Platte, Lincoln County Nebraska. Commissioners Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Peggy L. Meeske ("the Taxpayer") appeared at the hearing. Steven M. Virgil, Esq., appeared as counsel for the Taxpayer.

The Chase County Board of Equalization ("the County Board") appeared through counsel, Arlan G. Wine, Esq., the County Attorney for Chase 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 Taxpayer, in order to prevail, is required to demonstrate 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 residential real property described in the appeal as a 1986 Champion mobile home, placed on leased Lots 9-12, Block 3, Champion, Chase County, Nebraska ("the subject property").
2. The actual or fair market value of the subject property, placed on the assessment roll as of January 1, 2002, ("the assessment date") by the Chase County Assessor was \$23,117.00.
3. The Taxpayer timely protested that value to the County Board.
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 Notice.
7. A Notice and Order for Hearing issued on April 14, 2003, set a hearing of the Taxpayer's appeal for July 30, 2003, at 12:00 p.m. CDST.

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 is location in Champion Nebraska.
2. One of three confinement hog feeding facilities in Chase County is approximately two miles southeast of Champion another is approximately three miles southeast of Champion the third is perhaps nine miles to the southeast of Champion. (E13:1)
3. The Taxpayer testified that odor from the facilities has affected use of her home and other homes in Champion.
4. The Taxpayer testified that due to odors from the facilities that residents of Champion are no longer able to open up the windows and doors of their homes at night or to engage in outdoor activities.
5. The Taxpayer also testified that subsequent to the commencement of confinement hog feeding operations at the facilities that new and increased numbers of insects were present in Champion.
6. The Taxpayer testified that as of the date of hearing before the commission that the exterior of the subject property is in bad condition and is being resided. The Taxpayer further

testified that the condition of the subject property had not changed in the last year.

7. The Taxpayer testified that she has made no attempt to sell the subject property and cannot consider moving it due to the resulting hardship on her family.
8. The Taxpayer knew of only one mobile home sale in Chase County. A property record card was not offered for the sold mobile home.
9. That "comparable properties" share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation, 2nd Ed., International Association of Assessing Officers, 1996, p. 98.*
10. The Commission could not determine whether the sold mobile home was comparable to the subject property based on the testimony presented.
11. The Taxpayer did not offer an opinion of value for the subject property.
12. The Assessor testified that the subject property had been reappraised in 1997 with the appraised value placed on the assessment rolls for the tax year 1998 and that no adjustments to value have been made since that date.
(E12:2).

13. Exhibit 14 at page one shows in preliminary residential statistics for tax year 2002 that mobile homes (property type 07) had a median assessment sales ratio of 81.59 with 6 sales occurring in the study period of 07/01/99 to 06/30/01.
14. The median assessment sales ratio as the established measure of central tendency, is required for residential property to be between 92 to 100. Neb. Rev. Stat. 77-5023(3) (Cum. Supp. 2002).
15. After receipt of the preliminary statistics shown in Exhibit 14 the Assessor increased the value of mobile homes achieving a median sales assessment ratio of 95.41. (E15:1).
16. The assessor testified that the value of mobile homes in Champion were not subject to the increase.
17. The Assessor testified that the value of homes has been rising in Chase county due to employment opportunities in Imperial and that workers commute from Champion to Imperial for work.
18. The Assessor did not inspect the subject property as a part of the assessment process for tax year 2002.
19. The Taxpayer has adduced sufficient, clear and convincing evidence to overcome the statutory presumption in favor of the County Board due to a failure to inspect. The Taxpayer

has not however presented any evidence to quantify a reduction in value.

20. Based on the entire record before it, the Commission finds and determines that the actual or fair market value of the subject property for the tax year 2002 is \$23,117.00.
21. The value of the subject property as of the assessment date determined by the County Board is supported by the evidence.
22. The decision of the County Board was correct and neither arbitrary nor unreasonable.
23. The decision of the County Board should be affirmed.

**III.
CONCLUSIONS OF LAW**

1. Subject matter jurisdiction of the Commission is over all issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998)
2. The Commission has jurisdiction over the parties and the subject matter of this appeal.
3. The Commission, while making a decision, may not consider testimony, records, documents or other evidence which is not a part of the hearing record except those identified in the Commissions rules and regulations or Section 77-5016 (3). Neb. Rev. Stat. §77-5016(3) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9).

4. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (2002 Cum. Supp.).
5. "Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued." Neb. Rev. Stat. §77-112 (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 292 §4).
6. Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Neb. Rev. Stat. §77-112 (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 292 §4).
7. "Actual value, market value, and fair market value mean exactly the same thing." *Richards v. Board of Equalization*, 178 Neb. 537, 540, 134 N.W.2d 56, 58 (1965).

8. The Taxpayer must adduce evidence establishing that the action of the County Board was incorrect and unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002, as amended by 2003 Neb. Laws 291, §9). The Nebraska Supreme Court, in considering similar language, has held that "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 Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523, (2001).
9. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736, (2000).

10. The term "unreasonable" can be applied to a decision of an administrative agency only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447, (1999).
11. The Court has also held that "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).
12. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).

13. "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 Equalization*, 256 Neb. 7, 16, 588 N.W.2d 575, 581, (1999).
14. The appraisal of real estate is not an exact science. *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874, (1977).
15. The Nebraska Supreme Court has determined that "(w)here the county assessor does not act upon his own information, or does not make a personal inspection of the property, any presumption as to the validity of the official assessment does not obtain." *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 580, 144 N.W.2d 161, 169 (1966).
16. Proximity to confinement hog feeding facilities has an effect on the fair market value. Quantification of the effect is a matter of proof. *Livingston V. Jefferson County Board of Equalization*, 10 Neb.App, 934, 640 N.W.2d 426 (2002).

IV. DISCUSSION

The Taxpayer offered proof of proximity to confinement hog feeding operations, the resulting odors, and the lifestyle changes made at the subject property to compensate for the odors.

It is rational to believe odors described by the Taxpayer would have an adverse effect on the actual or fair market value of the subject property as used for residential purposes. There are, however, two requirements before a change in actual or fair market value could be granted. The first requirement is proof that a factor affecting actual or fair market value has occurred. The second requirement is a quantification of the effect of the factor. Neither the Taxpayer nor any other witness offered an opinion of actual or fair market value for the subject property different than the value established by the Assessor. The only other evidence offered by the Taxpayer which could be deemed to quantify a change to actual or fair market value as determined by the Assessor, Exhibit 5, allows calculation of a 16% discount from the sellers asking price. Based on the information contained in Exhibit 5, that residential property could not however be considered comparable to the subject property for purposes of establishing a discount to actual or fair market value. A failure of proof for whatever cause has the same effect, no adjustment can be made.

**IV.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the decision of the County Board determining the actual or fair market value of the subject property as of the assessment date, January 1, 2002 as \$23,117.00 is affirmed.
2. That this decision, if no appeal is timely filed, shall be certified to the Chase County Treasurer, and the Chase County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2002).
3. That any request for relief, by any party, which is not specifically provided for by this order is denied.
4. That each party is to bear its own costs in this matter.
5. That this decision shall only be applicable to tax year 2002.

6. This order is effective for purposes of appeal September 5, 2003.

IT IS SO ORDERED.

Dated September 5, 2003.

Wm. R. Wickersham, Vice-Chair

Susan S. Lore, Commissioner

Robert L. Hans, Commissioner

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