

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

JAMES A. WIDTFELDT, and JAMES	)	CASE NO.:		
A. WIDTFELDT, TRUSTEE,)			
	)	03A-43	03A-51	03A-59
Appellants,	)	03A-44	03A-52	03A-60
	)	03A-45	03A-53	03A-61
vs.	)	03A-46	03A-54	03A-62
	)	03A-47	03A-55	03A-63
HOLT COUNTY BOARD OF	)	03A-48	03A-56	03A-64
EQUALIZATION,	)	03A-49	03A-57	03A-65
	)	03A-50	03A-58	
Appellee.)			
)			
	)			FINDINGS AND FINAL ORDER
	)			DENYING RELIEF
)			

Appearances:

For the Appellant: James A. Widtfeldt, Esq.
Attorney at Law
P.O. Box 877
Atkinson, NE 68713

For the Appellee: Thomas P. Herzog, Esq.
Holt County Attorney
P.O. Box 511
O'Neill, NE 68763

Before: Commissioners Hans, Lore, Reynolds, and Wickersham.

**I.
STATEMENT OF THE CASE**

James A. Widtfeldt, individually and as Trustee of the James A. Widtfeldt Trust ("the Taxpayer"), owns twenty-three tracts of land located in Holt County, Nebraska ("the subject properties"). The Holt County Assessor determined that 80% of the actual or fair market value of the agricultural land component and 100% of the actual or fair market value of the non-agricultural land component of the subject properties totaled those amounts shown

below as of the January 1, 2003, assessment date. The Taxpayer timely protested those determinations and requested that the proposed values be reduced. The Board's values are also shown.

Case Number	Assessor's Value	Taxpayer's Req. Value	Board's Determination	Exhibit No.
03A-043	\$ 46,210	\$ 16,500	\$ 46,210	E27:5; E1
03A-044	\$ 165,035	\$ 40,000	\$ 162,025	E28:5; E2
03A-045	\$ 68,940	\$ 20,000	\$ 58,020	E29:5; E3
03A-046	\$ 146,905	\$ 64,000	\$ 146,905	E30:5; E4
03A-047	\$ 81,070	\$ 32,000	\$ 80,320	E31:5; E5
03A-048	\$ 227,280	\$ 94,000	\$ 216,420	E32:5; E6
03A-049	\$ 77,735	\$ 34,000	\$ 76,060	E33:5; E7
03A-050	\$ 47,000	\$ 8,000	\$ 47,000	E34:5; E8
03A-051	\$ 75,600	\$ 24,000	\$ 91,980	E35:5; E9
03A-052	\$ 13,450	\$ 4,000	\$ 13,450	E36:5; E10
03A-053	\$ 58,460	\$ 8,000	\$ 58,460	E37:5; E11
03A-054	\$ 112,390	\$ 44,000	\$ 111,820	E38:5; E12
03A-055	\$ 11,120	\$ 4,800	\$ 10,860	E49:5; E13
03A-056	\$ 154,850	\$ 67,600	\$ 154,700	E40:5; E14
03A-057	\$ 39,625	\$ 17,004	\$ 37,725	E41:5; E15
03A-058	\$ 140,705	\$ 48,205	\$ 138,705	E42:5; E16
03A-059	\$ 166,725	\$ 71,300	\$ 151,670	E43:5; E17
03A-060	\$ 132,650	\$ 40,000	\$ 132,650	E44:5; E18
03A-061	\$ 30,880	\$ 8,000	\$ 30,880	E45:5; E19
03A-062	\$ 102,450	\$ 42,550	\$ 102,450	E46:5; E20
03A-063	\$ 132,555	\$ 45,000	\$ 131,595	E47:5; E21
03A-064	\$ 71,355	\$ 24,000	\$ 71,355	E39:5; E22
03A-065	\$ 66,320	\$ 24,000	\$ 66,320	E48:5; E23

The Taxpayer appealed each of the Board's decisions on August 22, 2003. The Commission served a Notice in Lieu of Summons on the Board for each appeal except Case Number 03R-302 on September 30, 2003. The Commission served a Notice in Lieu of Summons on the Board in that case on October 2, 2003. The Board filed an Answer, without objection, in each appeal on October 9, 2003. The Commission consolidated each of these appeals for purposes of hearing in an Order dated November 13, 2003, and issued an Amended Order for Hearing and Notice of Hearing to each of the Parties on July 23, 2004. An Affidavit of Service in the Commission's records establishes that a copy of the Amended Order for Hearing and Notice of Hearing was served on each of the Parties.

The Commission called the case for a hearing on the merits of the appeal in the City of Lincoln, Lancaster County, Nebraska, on December 10, 2004. The Taxpayer appeared personally at the hearing. The Board appeared through Thomas P. Herzog, the Holt County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Wickersham served as the presiding officer.

**II.
ISSUES**

The issues before the Commission are (1) whether the Board's decisions to deny the Taxpayer's valuation protests were incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determinations of value for each of the subject properties was unreasonable.

**III.
APPLICABLE LAW**

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the Board's decisions were incorrect and (2) that the Board's decisions were unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2004 Neb. Laws, L.B.973, §51)). The "unreasonable or arbitrary" element requires clear and convincing evidence that the Board either (1) failed to faithfully perform its official duties; or (2) failed to act upon sufficient competent evidence in making its decisions. The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the Board's values were unreasonable. *Garvey Elevators v. Adams County Bd.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

**IV.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer's only evidence of actual or fair market value for any of the subject properties was the Taxpayer's opinion testimony.
2. The Taxpayer failed to adduce any evidence of sales prices or assessed values of comparable properties which might support his opinion of value.

**V.
ANALYSIS**

The Taxpayer alleged that (1) low interest farm loans and federal farm subsidy programs artificially inflate prices paid for agricultural land; (2) unfunded federal mandates and government regulations should reduce the actual or fair market value and therefore the assessed values of the subject properties as of the assessment date; (3) the actual income attributable to the agricultural land is insufficient to support prices paid for that land; (4) the accidental discharge of herbicides on the subject properties in 1997 should reduce the actual or fair market value and therefore the assessed value of the affected subject properties as of the assessment date; (5) the Farm Services Administration ("FSA") payments for some of the subject properties have been suspended since 2001 and the FSA is actively

seeking repayment of prior payments, which constitutes a taking of the subject property without just compensation, which should reduce the actual or fair market value of the subject properties and therefore the assessed values of the subject properties as of the assessment date; and (6) the assessed values of the subject properties fail to account for certain physical features, events and climatological changes which have increased operating costs and therefore reduce the actual or fair market values of the subject properties which, in turn, should also reduce the assessed values of the subject properties as of the assessment date. (E1 - E 23; Taxpayer's testimony; E50 - E57).

The Taxpayer's only evidence of actual or fair market value was his opinion testimony that the actual or fair market value of the subject properties ranged up to \$100 per acre for each of the subject properties. The Taxpayer adduced no other evidence of the actual or fair market value of the subject properties. The Taxpayer adduced no evidence of prices paid for the purchase of comparable properties and adduced no evidence of the costs of comparable improvements which might support his requested values.

A taxpayer who offers no evidence that the subject property is valued in excess of its actual value and who only produces evidence aimed at discrediting the valuation methods utilized by a county assessor fails to meet his or her burden of proving that the value of the property was not fairly and proportionately

equalized or that valuation placed upon the property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

The Taxpayer has failed to adduce any evidence that the Board's decisions were incorrect, or unreasonable or arbitrary. The Board's decision must accordingly be affirmed.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Parties and over 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 Board's action was incorrect and either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2004 Neb. Laws, L.B.973, §51).
3. The Board is presumed to have faithfully performed its official duties in determining the actual or fair market value of the property. The Board is also presumed to have acted upon sufficient competent evidence to justify its decision. These presumptions remain until the Taxpayer presents competent evidence to the contrary. If the presumption is extinguished the reasonableness of the Board's value becomes one of fact based upon all the

evidence presented. The burden of showing such valuation to be unreasonable rests on the Taxpayer. *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).

4. "Actual value" is defined as the market value of real property in the ordinary course of trade, or 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 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. Neb. Rev. Stat. §77-112 (Reissue 2003).
5. Actual value of real property for purposes of taxation may be determined using professionally accepted mass appraisal methods, including, but not limited to, (1) the sales comparison approach, taking into account factors such as location, zoning, and current functional use; (2) the income approach; and (3) the cost approach. The statute does not require use of all the specified factors, but requires use of applicable statutory factors, individually or in combination, to determine actual value of real estate for tax purposes. *Schmidt v. Thayer County Bd. of Equalization*, 10 Neb.App. 10, 18, 624 N.W.2d 63, 69 - 70 (2001).

6. The Taxpayer has failed to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

- 1. The Holt County Board of Equalization's Orders setting the assessed value of the subject properties for tax year 2003 are affirmed.
- 2. The Taxpayer's real property in Case Number 03A-43, legally described as Lot 4 and the W $\frac{1}{2}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, Township 33 North, Range 12, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$46,210
Farm Site	\$ -0-
Home Site	\$ -0-
Improvements	\$ -0-
Total	\$46,210

- 3. The Taxpayer's real property in Case Number 03A-44, legally described as the W $\frac{1}{2}$ and the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 14, Township 31, Range 13, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$162,025
Farm Site	\$ -0-
Home Site	\$ -0-
Improvements	\$ -0-
Total	\$162,025

4. The Taxpayer's real property in Case Number 03A-45, legally described as the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of Section 15, Township 31, Range 13, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$58,020
Farm Site	\$ -0-
Home Site	\$ -0-
Improvements	\$ -0-
Total	\$58,020

5. The Taxpayer's real property in Case Number 03A-46, legally described as All of Section 23, Township 31, Range 13, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$146,905
Farm Site	\$ -0-
Home Site	\$ -0-
Improvements	\$ -0-
Total	\$146,905

6. The Taxpayer's real property in Case Number 03A-47, legally described as the S½ of Section 24, Township 31, Range 13, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$80,320
Farm Site	\$ -0-
Home Site	\$ -0-
Improvements	\$ -0-
Total	\$80,320

7. The Taxpayer's real property in Case Number 03A-48, legally described as All of Section 25, Township 31, Range 13, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$157,950
Farm Site	\$ 575
Home Site	\$ 2,740
Improvements	\$ 55,155
Total	\$216,420

8. The Taxpayer's real property in Case Number 03A-49, legally described as the N½ of Section 26, Township 31, Range 13, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$73,765
Farm Site	\$ 290
Home Site	\$ -0-
Improvements	\$ 2,005
Total	\$76,060

9. The Taxpayer's real property in Case Number 03A-50, legally described as the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 26, Township 31, Range 13, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$47,000
Farm Site	\$ -0-
Home Site	\$ -0-
Improvements	\$ -0-
Total	\$47,000

10. The Taxpayer's real property in Case Number 03A-51, legally described as the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 26, Township 31, Range 13, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$91,980
Farm Site	\$ -0-
Home Site	\$ -0-
Improvements	\$ -0-
Total	\$91,980

11. The Taxpayer's real property in Case Number 03A-52, legally described as the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27, Township 31, Range 13, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$13,450
Farm Site	\$ -0-
Home Site	\$ -0-
Improvements	\$ -0-
Total	\$13,450

12. The Taxpayer's real property in Case Number 03A-53, legally described as the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 27, Township 31, Range 13, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$58,460
Farm Site	\$ -0-
Home Site	\$ -0-
Improvements	\$ -0-
Total	\$58,460

13. The Taxpayer's real property in Case Number 03A-54, legally described as the N $\frac{1}{2}$ and the N $\frac{1}{2}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, Township 31, Range 13, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$111,820
Farm Site	\$ -0-
Home Site	\$ -0-
Improvements	\$ -0-
Total	\$111,820

14. The Taxpayer's real property in Case Number 03A-55, legally described as the NW¹/₄NW¹/₄ of Section 2, Township 32, Range 13, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$10,860
Farm Site	\$ -0-
Home Site	\$ -0-
Improvements	\$ -0-
Total	\$10,860

15. The Taxpayer's real property in Case Number 03A-56, legally described as All of Section 3, Township 32, Range 13, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$154,700
Farm Site	\$ -0-
Home Site	\$ -0-
Improvements	\$ -0-
Total	\$154,700

16. The Taxpayer's real property in Case Number 03A-57, legally described as the E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 4, Township 32, Range 13, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$37,725
Farm Site	\$ -0-
Home Site	\$ -0-
Improvements	\$ -0-
Total	\$37,725

17. The Taxpayer's real property in Case Number 03A-58 legally described as the E $\frac{1}{2}$ and the E $\frac{1}{2}$ W $\frac{1}{2}$ excepting 1 acre in Section 9, Township 32, Range 13, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$138,705
Farm Site	\$ -0-
Home Site	\$ -0-
Improvements	\$ -0-
Total	\$138,705

18. The Taxpayer's real property in Case Number 03A-59, legally described as the W $\frac{1}{2}$ and the W $\frac{1}{2}$ SE $\frac{1}{4}$ and the N $\frac{1}{2}$ NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 10, Township 32, Range 13, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$145,180
Farm Site	\$ 1,150
Home Site	\$ -0-
Improvements	\$ 5,340
Total	\$151,670

19. The Taxpayer's real property in Case Number 03A-60, legally described as the NW $\frac{1}{4}$ and the W $\frac{1}{2}$ SE $\frac{1}{4}$ and the N $\frac{1}{2}$ SW $\frac{1}{4}$ and the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 15, Township 32, Range 13, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$132,650
Farm Site	\$ -0-
Home Site	\$ -0-
Improvements	\$ -0-
Total	\$132,650

20. The Taxpayer's real property in Case Number 03A-61, legally described in the Assessor's Office records as the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 16, Township 32, Range 31, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$30,880
Farm Site	\$ -0-
Home Site	\$ -0-
Improvements	\$ -0-
Total	\$30,880

21. The Taxpayer's real property in Case Number 03A-62, legally described as the S $\frac{1}{2}$ N $\frac{1}{2}$ and the S $\frac{1}{2}$ of Section 24, Township 33, Range 13, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$102,450
Farm Site	\$ -0-
Home Site	\$ -0-
Improvements	\$ -0-
Total	\$102,450

22. The Taxpayer's real property in Case Number 03A-63, legally described as the N $\frac{1}{2}$ and the SW $\frac{1}{4}$ and the N $\frac{1}{2}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, Township 33, Range 13, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$131,595
Farm Site	\$ -0-
Home Site	\$ -0-
Improvements	\$ -0-
Total	\$131,595

23. The Taxpayer's real property in Case Number 03A-064, legally described as the E½ of Section 26, Township 33, Range 13, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$71,355
Farm Site	\$ -0-
Home Site	\$ -0-
Improvements	\$ -0-
Total	\$71,355

24. The Taxpayer's real property in Case Number 03A-065, legally described as the W½ of Section 26, Township 33, Range 13, Holt County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Ag Land	\$66,320
Farm Site	\$ -0-
Home Site	\$ -0-
Improvements	\$ -0-
Total	\$66,320

25. Any request for relief by any Party not specifically granted by this order is denied.

26. This decision, if no appeal is filed, shall be certified to the Holt County Treasurer, and the Holt County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2004 Neb. Laws, L.B.973, §51).

27. This decision shall only be applicable to tax year 2003.

28. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

Dated this 14th day of December, 2004.

Robert L. Hans, Commissioner

Susan S. Lore, Commissioner

Mark P. Reynolds, Vice-Chair

SEAL

Wm. R. Wickersham, Chair

ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE APPEAL MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW IN NEBRASKA REVISED STATUTE §77-5019 (REISSUE 2003). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.