

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

STEHNO LAND CO., et al.,)		
)	CASE NO.	
Appellants,)	03A-32	03A-33
)	03A-35	03A-75
vs.)	03A-76	03A-77
)		
HITCHCOCK COUNTY BOARD OF EQUALIZATION,)	FINDINGS AND FINAL ORDER	
)		
Appellee.)		

Appearances:

For the Appellant: Raymond Stehno
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For the Appellee: D. Eugene Garner, Esq.
Hitchcock County Attorney
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Before: Commissioners Hans, Lore, Reynolds, and Wickersham.

**I.
STATEMENT OF THE CASE**

Stehno Land Co., Stehno Farms, Inc., and the F.J. Stehno Corp., ("the Taxpayer") own six tracts of land in Hitchcock County, Nebraska. The Taxpayer, in Case Number 03A-32, owns a 80-acre tract of land legally described as the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 25, Township 4, Range 35, in Hitchcock County, Nebraska. (Case Number 03A-32: E11:115). The tract of land is improved, however the actual or fair market value of the improvements are not at issue. (Case No. 03A-32: E11:115; E1). The State Assessing Official for Hitchcock County proposed valuing the subject property for purposes of real property taxation at \$158,225.

(Case Number 03A-32: E1). The Taxpayer filed a protest, and requested that the proposed value be reduced. (Case Number 03A-32: E1). The Hitchcock County Board of Equalization ("the Board") granted the protest in part, and determined that 80% of the actual or fair market value of the agricultural land component of the subject property and 100% of the actual or fair market value of the non-agricultural land component of the subject property totaled \$148,625 as of the assessment date. (Case Number 03A-32: E1). The Taxpayer appealed the Board's decision on August 18, 2003.

The Taxpayer, in Case Number 03A-33, owns an 480-acre tract of land legally described as the E $\frac{1}{2}$ and the NW $\frac{1}{4}$ of Section 25, Township 4, Range 35, in Hitchcock County, Nebraska. (Case Number 03A-32: E11:119). There are no improvements on this tract of land. (Case Number 03A-32: E11:119). The State Assessing Official proposed valuing the subject property for purposes of real property taxation at \$425,630. (Case Number 03A-32: E2). The Taxpayer filed a protest, and requested that the proposed value be reduced. (Case Number 03A-32: E2). The Board granted the protest in part, and determined that 80% of the actual or fair market value of the agricultural land component of the subject property was \$361,585 as of the assessment date. (Case Number 03A-32: E2). The Taxpayer appealed the Board's decision on August 18, 2003.

The Taxpayer, in Case Number 03A-35, owns an 480-acre tract of land legally described as the W $\frac{1}{2}$ and the SE $\frac{1}{4}$ of Section 26, Township 4, Range 35, in Hitchcock County, Nebraska. (Case Number 03A-32: E11:123). There are no improvements on this tract of land. (Case No. 03A-32: E11:123). The State Assessing Official proposed valuing the subject property for purposes of real property taxation at \$425,630. (Case Number 03A-32: E3). The Taxpayer filed a protest, and requested that the proposed value be reduced. (Case Number 03A-32: E3). The Board granted the protest in part, and determined that 80% of the actual or fair market value of the agricultural land component of the subject property was \$375,380 of the assessment date. (Case Number 03A-32: E3). The Taxpayer appealed the Board's decision on August 18, 2003.

The Taxpayer, in Case Number 03A-75, owns a 167.13-acre tract of land legally described as the SW $\frac{1}{4}$ and Part of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, Township 4, Range 35, in Hitchcock County, Nebraska. (Case No. 03A-75: E11:115). The tract of land is improved, however the actual or fair market value of the improvements are not at issue. (Case No. 03A-75: E11:115; E1). The State Assessing Official proposed valuing the subject property for purposes of real property taxation at \$256,435. (Case Number 03A-32: E1). The Taxpayer filed a protest, and requested that the proposed value be reduced. (Case Number 03A-

75: 1). The Board granted the protest in part, and determined that 80% of the actual or fair market value of the agricultural land component of the subject property and 100% of the actual or fair market value of the non-agricultural land component of the subject property totaled \$239,635 as of the assessment date.

(Case Number 03A-75: E1). The Taxpayer appealed the Board's decision on August 18, 2003.

The Taxpayer, in Case Number 03A-76, owns a 160-acre tract of land legally described as the SE¼ of Section 28, Township 4, Range 35, in Hitchcock County, Nebraska. (Case No.03A-75: E11:119). There are no improvements on this tract of land. (Case No. 03A-75: E11:119). The State Assessing Official for Hitchcock County proposed valuing the subject property for purposes of real property taxation at \$138,910. (Case Number 03A-75: E2). The Taxpayer filed a protest, and requested that the proposed value be reduced. (Case Number 03A-75: E2). The Board granted the protest in part, and determined that 80% of the actual or fair market value of the subject property was \$121,960 as of the assessment date. (Case Number 03A-75: E2). The Taxpayer appealed the Board's decision on August 18, 2003.

The Taxpayer, in Case Number 03A-77, owns a 160-acre tract of land legally described as the SW¼ of Section 34, Township 4, Range 35, in Hitchcock County, Nebraska. (Case No.03A-75: E11:123). There are no improvements on this tract of land. (Case

No. 03A-75: E11:123). The State Assessing Official proposed valuing the subject property for purposes of real property taxation at \$111,450. (Case Number 03A-75: E3). The Taxpayer filed a protest, and requested that the proposed value be reduced. (Case Number 03A-75: E3). The Board granted the protest in part, and determined that 80% of the actual or fair market value of the subject property was \$100,800 as of the assessment date. (Case Number 03A-75: E3). The Taxpayer appealed the Board's decision on August 18, 2003.

The Commission served a Notice in Lieu of Summons on the Board in each of the appeals, which the Board answered. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on June 2, 2004. An Affidavit of Service in the Commission's records establishes that a copy of the Order and Notice 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 North Platte, Lincoln County, Nebraska, on October 5, 2004. The Taxpayer in each of the appeals appeared through a corporate officer: Raymond W. Stehno, President, in Case Numbers 03A-32 and 03A-33, and Frank Stehno, President, in Case Numbers 03A-35, 03A-75, 03A-76 and 03A-77. The Board appeared through D. Eugene Garner, the Hitchcock County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham

heard the appeal. Commissioner Reynolds served as the presiding officer.

II. ISSUES

The issues before the Commission are (1) whether the Board's decisions to deny the Taxpayers' valuation protests were incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determinations of value were 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 2003 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 decision. The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the Board's value was 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 opinion of 80% of actual or fair market value for 1A irrigated land with deep wells in the northwest corner of Hitchcock County was \$772 per acre.
2. The basis for the Taxpayer's opinions of value is the increased cost of pumping water from deep wells when the price of diesel fuel for the motors operating the pumps was approximately \$.62 per gallon.

**V.
ANALYSIS**

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. This 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). The Board based its decision on the Sales Comparison Approach. (E11:114 - 154; E11:127). The Taxpayer's President

testified that there were no sales of Class 1A irrigated land with deep wells in the northwest corner of Hitchcock County. The Board rested without adducing any evidence.

The Taxpayer contends that the sales used by the Board were not truly comparable since the Taxpayer's properties are located in a different area of the county; and the Taxpayer's properties have wells with a depth of 350 to 420 feet while the Board's comparables have shallower wells. The Taxpayer offered uncontroverted evidence that the cost of pumping water for irrigated land with a well-depth of 50 feet was \$50 per acre, compared to costs of over \$100 per acre for irrigated land with a well-depth of 350 to 420 feet. The Taxpayer, however, failed to equate the higher costs of pumping water from deeper wells with the impact on actual or fair market value, if any. Furthermore, the Taxpayer's President admitted that agricultural land in the western part of Nebraska had been in a drought for the past five years. The Taxpayer's President indicated that in such circumstances irrigated land with an unrestricted water supply such as the subject properties have might command higher prices on the open market.

The Taxpayer was unable to quantify the impact on actual or fair market value of the wells on the subject properties all located in the northwest corner of Hitchcock County for tax year

2003. The Taxpayer has failed to overcome the statutory presumption. 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 these appeals.
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 2003 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. 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).
6. Based upon the applicable law, the Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was [incorrect and either] unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998); Neb. Rev. Stat. §77-5016(7) (Reissue 2003).
7. The Taxpayer has failed to adduce clear and convincing evidence that the Board's decision was incorrect and either

unreasonable or arbitrary. The Board's decisions must accordingly be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Hitchcock 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-32, legally described as the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 25, Township 4, Range 35, in Hitchcock County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Land	\$ 66,680
Improvements	\$ 81,945
Total	\$148,625

3. The Taxpayer's real property in Case Number 03A-33, legally described as the E $\frac{1}{2}$ and the NW $\frac{1}{4}$ of Section 25, Township 4, Range 35, in Hitchcock County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Land	\$361,585
Improvements	\$ -0-
Total	\$361,585

4. The Taxpayer's real property in Case Number 03A-35, legally described as the W $\frac{1}{2}$ and the SE $\frac{1}{4}$ of Section 26, Township 4, Range 35, in Hitchcock County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Land	\$375,380
Improvements	\$ -0-
Total	\$375,380

5. The Taxpayer's real property in Case Number 03A-75, legally described as the SW $\frac{1}{4}$ and Part of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, Township 4, Range 35, in Hitchcock County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Land	\$126,470
Improvements	\$113,165
Total	\$239,635

6. The Taxpayer's real property in Case Number 03A-76, legally described as the SE $\frac{1}{4}$ of Section 28, Township 4, Range 35, in Hitchcock County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Land	\$121,960
Improvements	\$ -0-
Total	\$121,960

7. The Taxpayer's real property in Case Number 03A-77, legally described as the SW $\frac{1}{4}$ of Section 34, Township 4, Range 35, in

Hitchcock County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Land	\$100,800
Improvements	\$ -0-
Total	\$100,800

8. Any request for relief by any Party not specifically granted by this order is denied.
9. This decision, if no appeal is filed, shall be certified to the Hitchcock County Treasurer, and the State Assessing Official for Hitchcock County, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).
10. This decision shall only be applicable to tax year 2003.

11. 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 5th day of October, 2004. The same were approved and confirmed by Commissioners Hans, Reynolds and Wickersham and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Reissue 2003).

Signed and sealed this 6th day of October, 2004.

SEAL

Wm. R. Wickersham, Chair