

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

SHONA E. HEIM, et al.,)	
)	
Appellants,)	CASE NO. 03R-230
)	
vs.)	
)	
CHASE COUNTY BOARD OF)	FINDINGS AND FINAL ORDER
EQUALIZATION,)	DISMISSING APPEAL AT CLOSE OF
)	TAXPAYER'S CASE-IN-CHIEF
)	
Appellee.)	

Appearances:

For the Appellant: Shona E. Heim
73227 328 Avenue
Champion, NE 69023

For the Appellee: Arlan Wine, Esq.
Chase County Attorney
P.O. Box 1299
Imperial, NE 69033

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

**I.
STATEMENT OF THE CASE**

Shona E. Heim, ("the Taxpayer") is one of the owners of a 320-acre tract of land legally described as the S½ of Section 35, Township 6, Range 39, in Chase County, Nebraska. (E6:2). The tract of land is improved with a single-family residence with 1,200 square feet of above-grade finished living area, and three outbuildings ("the subject property"). (E6:2).

The Chase County Assessor ("the Assessor") 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 and 100% of

the improvement component of the subject property's or fair market value totaled \$143,724 as of the January 1, 2003, assessment date. (E1). The Taxpayer timely filed a protest of that determination and requested that the proposed value be reduced. (E1). The Chase County Board of Equalization ("the Board") denied the protest. (E1).

The Taxpayer appealed the Board's decision on August 25, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 26, 2003, which the Board answered on October 24, 2003. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on June 3, 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 6, 2004. The Taxpayer appeared personally at the hearing. The Board appeared through Arlan Wine, Esq., the Chase County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer.

The Commission afforded each of the Parties the opportunity to present evidence and argument. The Taxpayer testified that the value of the land component was not at issue. The Taxpayer adduced no exhibits, but adduced opinion testimony of value. The

Board moved to dismiss the appeal at the close of the Taxpayer's case-in-chief for failure to overcome the statutory presumption.

II. ISSUES

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayer's valuation protest was incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determination of value was unreasonable.

III. APPLICABLE LAW

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the Board's decision was incorrect and (2) that the Board's decision was 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 testified that the proximity of a hog confinement facility and the resulting odor adversely impacted both the use and the actual or fair market value of the improvement component of the subject property.
2. The Taxpayer testified that there were no sales of comparable property, and offered no other evidence of actual or fair market value for the improvement component of the subject property as of the assessment date.

**V.
ANALYSIS**

The Taxpayer testified that in her opinion the actual or fair market value of the improvement component of the subject property was \$16,274. An owner who is familiar with his property and knows its worth is permitted to testify as to its value. *US Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999). The Taxpayer, however, adduced no other evidence of value.

The Board, based upon the applicable law, 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). The Board's Motion to Dismiss must accordingly be granted.

**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 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 Taxpayer has failed to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Board's Motion must accordingly be granted.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Board's Motion to Dismiss is granted.
2. The Taxpayer's real property legally described as the S½ of Section 35, Township 6, Range 39, in Chase County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Land	\$111,576
Improvements	\$ 28,705
Outbuildings	\$ 3,443
Total	\$143,724

3. Any request for relief by any Party not specifically granted by this order is denied.
4. This decision, if no appeal is filed, shall be certified to the Chase County Treasurer, and the Chase County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).
5. This decision shall only be applicable to tax year 2003.
6. 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 6th 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 7th day of October, 2004.

SEAL

Wm. R. Wickersham, Chair