

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

EUGENE A. JURGENS,)	
Appellant,)	CASE NO. 02A-29
vs.)	DOCKET ENTRY
GAGE COUNTY BOARD OF)	AND ORDER
EQUALIZATION,)	DISMISSING THE APPEAL
Appellee.)	AT THE CLOSE OF THE TAXPAYER'S CASE

The Nebraska Tax Equalization and Review Commission ("the Commission") called the above-captioned case for a hearing on the merits of the appeal on June 4, 2003. The hearing was held in the City of Lincoln, Lancaster County, Nebraska, pursuant to a Notice of Hearing issued February 27, 2003. Commissioners Hans, Lore, Wickersham, and Reynolds heard the appeal. Commissioner Reynolds, Chair, presided at the hearing.

Eugene A. Jurgens ("the Taxpayer") appeared personally at the hearing. The Gage County Board of Equalization ("the Board") appeared through Richard T. Smith, the Gage 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. STANDARD OF REVIEW

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**

From the record, the Commission finds and determines as follows:

**A.
PROCEDURAL FINDINGS**

1. The Taxpayer is the owner of record of certain agricultural real property located in Gage County, Nebraska ("the subject property").
2. The Gage County Assessor ("the Assessor") proposed valuing the subject property in the amount of *\$140,025* for purposes of taxation as of January 1, *2002* ("the assessment date").
(E1). The Assessor valued the land component in the amount of *\$55,535*. (E1). The value of the improvements component (*\$84,490*) included *\$81,970* for the residence and *\$2,520* for agricultural outbuildings. (E11:1).
3. The Taxpayer timely filed a protest of the proposed valuation and requested that the subject property be valued in the amount of *\$115,535*. (E1).
4. The protest alleged that the actual or fair market value of the subject property was adversely impacted by the close

proximity of a commercial chicken egg laying operation which is noisy and attracts flies and beetles. (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 23, 2002. The Board timely filed an Answer on August 28, 2002. The Commission issued an Order for Hearing and Notice of Hearing on February 27, 2003. The Notice set the matter for a hearing on the merits of the appeal for June 4, 2003.
8. The only issue raised before the Board was the actual or fair market value of the improvement component of the subject property. Therefore the only issue before the Commission is the actual or fair market value of the improvement component of the subject property as of the assessment date.
9. The Board, at the close of the Taxpayer's case-in-chief, moved to dismiss the appeal for failure to prove a prima facie case.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The subject property is either a tract of land approximately 63.07 acres in size (E3:43) or a tract of land approximately

23.07 acres in size (E3:41). The tract of land is located in Section 16, Township 5, Range 8, Gage County, Nebraska. (E3:43).

2. The tract of land is improved with a single-family residence which was built in 1962. (E2:43). The residence is a ranch style home with 1,804 square feet of above-grade finished living area. (E3:44). The home also has a full basement (1,804 square feet in size), of which 595 square feet is finished with a "recreational finish." (E3:44). The construction of a 524-square foot addition to the home was started in 2001, but was not complete as of the assessment date. (E3:42).
3. The Taxpayer adduced his testimony, and that of his wife. The Taxpayer originally offered no opinion or other evidence of value for the improvement component of the subject property. Later in the proceedings the Taxpayer testified that in his opinion the actual or fair market of the improvement component of the subject property was \$60,000. The Taxpayer further testified that this opinion was based on a "wild guess."
4. The Taxpayer testified that the subject property is not located in a "remote" location.

5. The Taxpayer's wife testified as to an opinion of value (\$60,000), but also testified that there was no basis for the opinion.
6. The Taxpayer adduced no evidence establishing that the decision of the Board was incorrect, unreasonable or arbitrary.

**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 County unless evidence is adduced establishing that the action of the County was unreasonable or arbitrary. *Neb. Rev. Stat. §77-5016(7) (Cum. Supp.2002, as amended by 2003 Neb. Laws, L.B. 291, §9).*
3. 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. "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 Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).

5. In determining fair market value of the taxpayer's house for property tax purposes, the Tax Equalization and Review Commission is required to specifically consider external depreciation due to a nearby [commercial] facility, regardless of fact that the taxpayer owned [the] facility . the taxpayer was entitled to have his property valued with consideration of the fact that it was overbuilt for its location. *Livingston v. Jefferson County Bd. of Equalization*, 10 Neb.App. 934, 943, 640 N.W.2d 426, 435 (Neb.App. 2002).
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 unreasonable or arbitrary." *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998). The Board's Motion to Dismiss must accordingly be granted.

**IV.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the Board's Motion to Dismiss be, and hereby is, granted.

2. That as a result of this order the Taxpayer's agricultural real property located in Section 16, Township 5, Range 8, Gage County, Nebraska, shall be valued as follows for tax year 2002, as determined by the Board:

Land	\$ 55,535
Improvements	\$ 84,490
Total	\$140,025

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 Gage County Treasurer, and the Gage 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 Hans made and entered the above and foregoing Findings and Orders in this appeal on the 4th day of June, 2003. The same were approved and confirmed by Commissioners Lore and Wickersham, and are therefore deemed to be

the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005 (5) (Cum. Supp. 2002).

Signed and sealed this 5th day of June, 2003.

SEAL





Mark P. Reynolds, Chair