

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

PHILLIP P. LUBKE AND LAVONNE)	
LUBKE TRUST,)	
Appellant,)	CASE NO. 02A-21
vs.)	DOCKET ENTRY AND ORDER
PIERCE COUNTY BOARD OF)	VACATING AND REVERSING
EQUALIZATION,)	THE DECISION OF THE COUNTY BOARD OF EQUALIZATION
Appellee.	

The Nebraska Tax Equalization and Review Commission ("the Commission") called the above-captioned case for a hearing on the merits of the appeal on the 28th day of May, 2003. The hearing was held in the City of Norfolk, Madison County, Nebraska, pursuant to a Notice of Hearing issued the 21st day of February, 2003. Commissioners Hans, Lore, Wickersham, and Reynolds heard the appeal. Commissioner Wickersham, Vice-Chair, presided at the hearing.

Phillip P. Lubke, one of the Trustees of the Phillip P. Lubke and LaVonne Lubke Trust ("the Taxpayer") appeared personally at the hearing. The Pierce County Board of Equalization ("the Board") appeared through Duane Deane, the Pierce County Assessor. The Commission made certain documents a part of the record pursuant to Neb. Rev. Stat. X77-5016(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 Pierce County, Nebraska ("the subject property").
 2. The Pierce County Assessor ("the Assessor") proposed valuing the subject property in the amount of \$103,650 for purposes of taxation as of January 1, 2002 ("the assessment date") (E1).
 3. The Taxpayer timely filed a protest of the proposed valuation and requested that the subject property be valued in the amount of \$93,000. (E1).
 4. The protest alleged that the 79 acres of the 160-acre tract were improperly classified as dry land when in fact those acres utilized as grass land. (E1).
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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 8, 2002. The Board filed an Answer on September 9, 2002.
8. The Commission issued an Order for Hearing and Notice of Hearing on February 21, 2003. The Notice set the matter for a hearing on the merits of the appeal for May 29, 2003.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The subject property is a tract of land approximately 160-acres in size which is legally described as the w¹/₄ of Section 10, Township 26, Range 3, in Pierce County, Nebraska. (E1). The tract of land is located in Agricultural Market Area 1 of Pierce County, Nebraska. (E3:9).
 2. The 79-acres of land at issue were placed in the federal Conservation Reserve Program ("CRP") pursuant to a contract with the federal government. The contract was not in effect as of the assessment date. The 79-acre tract was again placed in CRP during calendar year 2002.
 3. The 79-acre tract of land was classified as "dry land" as of the January 1, 2002, assessment date. (E3:9).
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4. The 79-acre tract of land was used as grass land as of the assessment date.
5. The assessed value of the subject property, if the 79-acre tract is valued as grass land, would be \$93,000 as of the assessment date. [Value of disputed acres is \$36,175 if classified as dry land. (E2:3.) Value of disputed acres if classified as grass is \$25,525. (E2:4). Assessed value of entire property (\$103,650) less value of contested acres classified as dry land (\$36,175) plus value of contested acres classified as grass land (\$25,525) equals total value of \$93,000.]
6. The Taxpayer has adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the Board.
7. The Commission, based on the entire record before it, finds and determines that 80% of the actual or fair market value of the subject property as of the assessment date was \$93,000.
8. Therefore the decision of the Board was incorrect, unreasonable and arbitrary, and that decision must be vacated and reversed.

**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). 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 Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).
3. "It is the function of the county board of equalization to determine the actual value of locally assessed property for

tax purposes. In carrying out this function, the county board must give effect to the constitutional requirement that taxes be levied uniformly and proportionately upon all taxable property in the county. Individual discrepancies and inequalities within the county must be corrected and equalized by the county board of equalization." *AT & T Information Systems, Inc. v. State Bd. of Equalization and Assessment*, 237 Neb. 591, 595, 467 N.W.2d 55, 58 (Neb. 1991).

**IV.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the order of the Pierce County Board of Equalization setting the assessed value of the subject property for tax year 2002 is vacated and reversed.
2. That the Taxpayer's agricultural real property legally described as W¹⁻ of Section 10, Township 26, Range 3, in Pierce County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$93,000
Improvements	\$ -0-
Total	\$93,000

3. That any request for relief by any party not specifically granted by this order is denied.

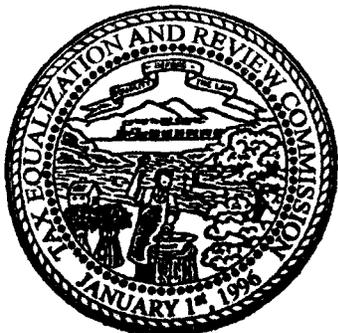
4. That this decision, if no appeal is filed, shall be certified to the Pierce County Treasurer, and the Pierce County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9).
5. That this decision shall only be applicable to tax year 2002.
6. That 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 29th day of May, 2003. The same were approved and confirmed by Commissioners Lore and Reynolds, and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. X77-5005(5) (Cum. Supp. 2002).

Signed and sealed this 30th day of May, 2003.

SFAL





Mark P. Reynolds, Chair