

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

MAX AND PEGGY MORGAN TRUST,	)	
	)	
Appellant,	)	CASE NO. 02A-169
	)	
vs.	)	FINDINGS AND ORDER
	)	AFFIRMING THE DECISION OF THE
THURSTON COUNTY BOARD OF	)	THURSTON COUNTY BOARD OF
EQUALIZATION,	)	EQUALIZATION
	)	
Appellee.	)	

The above-captioned case was called for a hearing on the merits of an appeal by the Max and Peggy Morgan Trust, to the Tax Equalization and Review Commission ("the Commission"). The conclusion of the hearing was held by video conference originating in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, following a recess on May 28, 2003, until November 12, 2003. The commencement of the hearing and its continuation were pursuant to a Notice and Order for Hearing issued February 21, 2003 and amended September 4, 2003. Commissioners Wickersham, Reynolds, Lore, and Hans were present at the commencement and the conclusion of the hearing. Commissioner Wickersham presided at the hearing.

Max Morgan, Trustee of the Max and Peggy Morgan Trust, appeared without counsel at the commencement and the conclusion of the hearing on behalf of the Max and Peggy Morgan Trust ("the Taxpayer").

The Thurston County Board of Equalization ("the County Board") appeared at all times through counsel, Albert E. Maul, Esq., the County Attorney for Thurston County, Nebraska.

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Cum. Supp. 2002) to state its final decision concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case is as follows.

**I.**  
**STANDARD OF REVIEW**

The Taxpayer, in order to prevail, is required to demonstrate that the decision of the County Board was incorrect and arbitrary or unreasonable. Neb. Rev. Stat. §77-5016(7) (Supp. 2003). The presumption created by the statute can be overcome if the Taxpayer shows by clear and convincing evidence that the County Board either failed to faithfully perform its official duties or that the County Board failed to act upon sufficient competent evidence in making its decision. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524, (2001). It is the Taxpayer's burden to overcome the presumption with clear and convincing evidence of more than a difference of opinion. *Garvey Elevators, Inc v.*

*Adams County Bd. of Equalization*, 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 Board was unreasonable. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524, (2001).

**II.  
FINDINGS**

The Commission finds and determines that:

**A.  
PROCEDURAL FINDINGS**

1. The Taxpayer is the owner of record of certain real property described in the appeal as the NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec 4, Township 25 North, Range 9 East 6th PM, Thurston County, Nebraska ("the subject property").
2. Eighty percent of the actual or fair market value of the agricultural land and horticultural land, together with the actual or fair market value of land other than agricultural and horticultural land and improvements which together constitute the subject property, placed on the assessment roll as of January 1, 2002, ("the assessment date") by the Thurston County Assessor was:

Land value           \$151,690.00  
Improvement value \$ 16,170.00  
Total value           \$167,860.00.

3. The Taxpayer timely protested that value to the County Board. The Taxpayer requested the following value for the subject property on the protest form:

Land value           \$119,253.00  
Improvement value \$ 16,170.00  
Total value           \$135,423.00.

4. The County Board denied the protest. (E:1).
5. The Taxpayer timely filed an appeal of that decision to the Commission.
6. The County Board was served with a Notice in Lieu of Summons, and duly answered that Notice.
7. A Notice and Order for Hearing issued on February 21, 2003, set a hearing of the Taxpayer's appeal for May 28, 2003. The May 28 hearing was recessed until November 12, 2003, at 10:00 a.m. CST pursuant to an Amended Order and Notice for Hearing issued September 4, 2003.
8. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Notice and Order for Hearing and the Amended Order and Notice for Hearing was served on all parties.

**B.**  
**SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS**

1. The subject property consists of 275.7 acres with improvements (E16:2).
2. The value of the improvements was not at issue. (E:1).
3. A portion of the subject property (152.8 acres) is enrolled in the federal Conservation Reserve Program (CRP) at a gross annual rental of \$11,800 (\$77.23 per acre).
4. Lands enrolled in CRP are subject to use restrictions. After enrollment the sole allowed use of the enrolled lands was as grassland. Grazing is not allowed except in times of drought.
5. The subject property's current enrollment in CRP began in 1999 and will extend to the year 2008.
6. The portion of the subject property in CRP had been used for dry crop land production prior to enrollment.
7. Rules and Regulations of the Property Tax Administrator require classification of lands enrolled in CRP at its current use as of the assessment date including use as grassland. Values assigned to the land should be adjusted to reflect the local market for similar property. 350 Neb. Admin. Code, Chap 14 §004.04F (03/01).
8. Approximately 28.9 acres of the subject property were used as dry cropland during the tax year 2002 and prior years.

9. The land classifications assigned to the subject property by the assessor for tax year 2002 were 184.10 acres dry cropland, 8.00 acres grassland, 79.4 acres waste, 1.00 acre homesite, 1.2 acres building site, and 2.00 acres roads. (E16:1).
10. The assessor classified lands enrolled in CRP as dry crop land even though the only permitted use was as grassland and rules and regulations of the Property Tax Administrator requires classification as grassland.
11. The Taxpayer did not offer an opinion concerning the value of the subject property as of the assessment date. The Trustee testified that the value stated on the protest form was based on "inflation". The Trustee offered no evidence explaining that testimony.
12. The subject property is the only tract owned by the Taxpayer in Thurston County and the Trustee has not bought or sold other lands.
13. An opinion of value based on "inflation" and without knowledge of the market for agricultural and horticultural land is not clear and convincing evidence of actual or market value.
14. Valuation of the CRP land as grassland using mass appraisal techniques requires assignment of soil types and a schedule for their conversion into the land capability groups for

grassland or the conversion as well as the table of values to be assigned to each land capability group of grassland. 350 Neb. Admin. Code, Chap 14 §§004.08 and 006.03(03/01).

15. The Taxpayer presented no evidence to the Commission concerning the grassland land capability groups applicable to the CRP land.
16. The Taxpayer has adduced evidence showing that valuation of the subject property was not correct because it was not properly classified.
17. The Taxpayer has not adduced sufficient, clear and convincing evidence to overcome the statutory presumption in favor of the County Board because no evidence was presented concerning the value of the land if properly classified.
18. Based on the entire record before it, the Commission finds and determines that eighty percent of the actual or fair market value of the agricultural land and horticultural land, together with the actual or fair market value of land other than agricultural land and horticultural land and improvements which together constitute the subject property for the tax year 2002 is:

Land value	\$151,690.00
Improvement value	<u>\$ 16,170.00</u>
Total value	<u>\$167,860.00.</u>

19. The value of the subject property as of the assessment date determined by the County Board is supported by the presumption in favor of the County Board.
20. The decision of the County Board was incorrect but was neither arbitrary nor unreasonable.
21. The decision of the County Board must be affirmed.

**III.  
CONCLUSIONS OF LAW**

1. Subject matter jurisdiction of the Commission is over all issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998).
2. The Commission has jurisdiction over the parties and the subject matter of this appeal.
3. The Commission, while making a decision, may not consider testimony, records, documents or other evidence which is not a part of the hearing record except those identified in the Commissions rules and regulations or Section 77-5016 (3). Neb. Rev. Stat. §77-5016(3) (Supp. 2003).
4. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2002).

5. Agricultural land and horticultural land shall be valued for purposes of taxation at eighty percent of its actual value. Neb. Rev. Stat. §77-201(2) (Cum. Supp. 2002).
6. Agricultural land and horticultural land means land which is primarily used for the production of agricultural or horticultural products, including wasteland lying in or adjacent to and in common ownership or management with land used for the production of agricultural or horticultural products. Land retained or protected for future agricultural or horticultural uses under a conservation easement as provided in the Conservation and Preservation Easements Act shall be defined as agricultural land or horticultural land. Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land. Land that is zoned predominantly for purposes other than agricultural or horticultural use shall not be assessed as agricultural land or horticultural land. Neb. Rev. Stat. §77-1359(1) (2002 Cum. Supp.).
7. Agricultural or horticultural products include grain and feed crops; forages and sod crops; animal production, including breeding, feeding, or grazing of cattle, horses, swine, sheep, goats, bees, or poultry; and fruits,

vegetables, flowers, seeds, grasses, trees, timber, and other horticultural crops. Neb. Rev. Stat. §77-1359(2) (2003 Supp.)

8. "Actual value is 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 a 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. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued." Neb. Rev. Stat. §77-112 (Supp. 2003).
9. Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Neb. Rev. Stat. §77-112 (Supp. 2003).
10. "Actual value, market value, and fair market value mean exactly the same thing." *Richards v. Board of Equalization*, 178 Neb. 537, 540, 134 N.W.2d 56, 58 (1965).
11. The Taxpayer must adduce evidence establishing that the action of the County Board was incorrect and unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Supp. 2003). 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 Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523, (2001).

12. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion.  
*Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736, (2000).
13. The term "unreasonable" can be applied to a decision of an administrative agency only if the evidence presented leaves no room for differences of opinion among reasonable minds.  
*Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447, (1999).

14. The Court has also held that "In an appeal to the county board of equalization or to [the Tax Equalization and Review Commission] and from the [Commission] to this court, the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment." *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523, (2001).
15. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).

**IV.  
ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:**

1. That the decision of the County Board determining eighty percent of the actual or fair market value of the agricultural land and horticultural land, together with the

actual or fair market value of land other than agricultural land and horticultural land, and improvements which together constitute the subject property as of the assessment date, January 1, 2002 as follows:

Land value	\$151,690.00
Improvement value	<u>\$ 16,170.00</u>
Total value	<u>\$167,860.00</u>

is affirmed.

2. That this decision, if no appeal is timely filed, shall be certified to the Thurston County Treasurer, and the Thurston County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2002).
3. That any request for relief, by any party, which is not specifically provided for by this order is denied.
4. That each party is to bear its own costs in this matter.
5. That this decision shall only be applicable to tax year 2002.

6. This order is effective for purposes of appeal November 17, 2003.

**IT IS SO ORDERED.**

Dated November 17, 2003.

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Wm. R. Wickersham, Vice-Chair

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Susan S. Lore, Commissioner

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Mark P. Reynolds, Chair

**SEAL**

Commissioner Hans dissents. Grassland values should be applied to the CRP land. Lacking direct evidence of values, I would grant the Taxpayer's requested value.

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Robert L. Hans, Commissioner