

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

CAROL A. SCHOOLEY,	)	
	)	
Appellant,	)	CASE NO. 02A-223
	)	
vs.	)	DOCKET ENTRY
	)	AND ORDER
HOWARD COUNTY BOARD OF	)	AFFIRMING THE DECISION
EQUALIZATION,	)	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 September 25, 2003. The hearing was held in the City of Kearney, Buffalo County, Nebraska, pursuant to a Notice of Hearing issued June 16, 2003. Commissioners Hans, Lore, Wickersham, and Reynolds heard the appeal. Commissioner Reynolds, Chair, presided at the hearing.

Carol A. Schooley ("the Taxpayer") appeared personally at the hearing. The Howard County Board of Equalization ("the Board") appeared through Karin L. Noakes, the Howard 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.**  
**APPLICABLE LAW**

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**

The Commission, from the record before it, finds and determines as follows:

**A.  
PROCEDURAL FINDINGS**

1. The Taxpayer is the owner of record of certain agricultural real property located in Howard County, Nebraska ("the subject property").
2. The Howard County Assessor ("the Assessor") proposed valuing the subject property in the amount of \$106,635 for purposes of taxation as of January 1, 2002 ("the assessment date"). (E1).
3. The Taxpayer timely protested the Assessor's proposed value for the land component but not the buildings. (E1).
4. The protest alleged that the presence of a hog confinement operation located 1.5 miles from the subject property adversely impacted actual or fair market value. (E1).
5. The Board denied the protest. (E1).

6. The Taxpayer timely appealed the Board's decision to the Commission. (Appeal Form).
7. The Commission served a Notice in Lieu of Summons on the Board on September 13, 2002. The Board timely filed an Answer on September 23, 2002.
8. The Commission issued an Order for Hearing and Notice of Hearing on June 16, 2003. The Notice set the matter for a hearing on the merits of the appeal for September 25, 2003.
9. The Affidavit of Service included in the Commission's records establishes that copies of the Order and Notice were served on each of the Parties.
10. The Taxpayer did not request a reduced value for the improvement component of the subject property. (E1). The value of the improvement component (\$22,808) is not at issue. (E1; E24:1).

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

1. The subject property is a tract of land approximately 160 acres in size. The tract of land is legally described as NW<sup>1</sup>/<sub>4</sub> except tract in Section 8, Township 16, Range 10, in Howard County, Nebraska. (E1).
2. The tract of land is improved with a single family residence with an actual or fair market value of \$19,258. (E24:2).

There are also agricultural outbuildings with an actual or fair market value of \$3,550 on the tract of land. (E24:2).

3. The Taxpayer adduced no evidence quantifying the impact on actual or fair market value of the land component of the subject property due to the proximity of the feed lot which is located 1.5 miles from the subject property.

### **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 Board unless evidence is adduced establishing that the action of the Board was incorrect and either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp.2002, as amended by 2003 Neb. Laws, L.B. 291, §9).
3. The Board's decision is presumed to be correct. The Board is presumed to have faithfully performed its official duties. The Board is also presumed to have acted upon sufficient competent evidence to justify its action. These presumptions remain in effect until there is competent evidence to the contrary presented. If such evidence is presented, the presumption disappears. From that point on, the reasonableness of the Board's value is one of fact based upon all the evidence presented. The taxpayer bears the

burden of showing the Board's value to be unreasonable.

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

4. The Taxpayer has failed to demonstrate by clear and convincing evidence that the Board's decision was incorrect, and either unreasonable or arbitrary. The Board's decision must accordingly be affirmed.

**IV.  
ORDER**

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

1. That Howard County Board of Equalization's Order setting the assessed value of the subject property for tax year 2002 is affirmed.
2. That Taxpayer's agricultural real property legally described as the NW  $\frac{1}{4}$  except tract in Section 8, Township 16, Range 10, Howard County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$ 83,827
Improvements	\$ 22,808
Total	\$106,635
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 Howard County Treasurer, and the Howard

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 Lore made and entered the above and foregoing Findings and Orders in this appeal on the 25<sup>th</sup> day of September, 2003. The same were approved and confirmed by Commissioners Hans and Wickersham, and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §6).

Signed and sealed this 26<sup>th</sup> day of September, 2003.

**SEAL**

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Mark P. Reynolds, Chair