

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

SCOTT SNYDER,,)	
)	
Appellant,)	CASE NO. 02A-239 and 02A-240
)	
vs.)	FINDINGS AND ORDER
)	AFFIRMING THE DECISION OF THE
HITCHCOCK COUNTY BOARD OF)	HITCHCOCK COUNTY BOARD OF
EQUALIZATION,)	EQUALIZATION
)	
Appellee.)	

The above-captioned cases were called for a hearing on the merits of appeals by Scott Snyder to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the meeting room of the Hampton Inn, 200 Platte Oasis Parkway, in the City of North Platte, Lincoln County, Nebraska. Commissioners Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Scott Snyder ("the Taxpayer") appeared at the hearing without counsel.

The Hitchcock County Board of Equalization ("the County Board") appeared through counsel, Joel W. Phillips, Esq., a Special County Attorney for Hitchcock 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) (Cum. Supp. 2002, as amended Neb. Laws, L.B. 291 § 9). 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).

**II.
FINDINGS**

The Commission finds and determines that:

**A.
PROCEDURAL FINDINGS**

1. The Taxpayer is the owner of record of certain agricultural land and horticultural land and other real property described in the appeals filed as follows: Case No 02A-239 Lots 10 & 11 Section 2, Township 2 North, Range 33 North, 6th PM; and Case No 02A-240 Lots 9 & 10 Section 3, Township

2 North, Range 33 West, 6th PM, Hitchcock County, Nebraska
("the subject property").

2. The County Board for Hitchcock County has adopted a resolution allowing use of special valuation in that County.
3. Zoning regulations have been adopted in Hitchcock County.
4. The Taxpayer timely applied for special valuation of the subject property.
5. Taxpayer's applications for special valuation were timely denied by the State Assessing Official for Hitchcock County.
6. Eighty percent of the actual or fair market value of the agricultural land and horticultural land and the actual or fair market value of other land in each parcel of the subject property described in the appeals, placed on the assessment roll as of January 1, 2002, ("the assessment date") by the State Assessing Official for Hitchcock County was:

Case No. 02A-239

Agricultural and	
Horticultural land	\$ 7,800.00
Other Land value	<u>\$39,530.00</u>
Total value	<u>\$47,330.00</u>

Case No. 02A-240

Agricultural and
Horticultural land \$ 2,730.00
Other Land value \$31,490.00
Total Value \$34,220.00. (E24:2 and E25:2)

7. The Taxpayer timely protested the determinations of the State Assessing Official for Hitchcock County concerning eligibility of the subject property for special valuation to the County Board.
8. The Taxpayer proposed the following values for each parcel of the subject property described in the appeals:

Case No. 02A-239

Land value \$12,293.19

Case No. 02A-240

Land value \$ 8,403.00. (E1:1 and E2:1)

9. The County Board denied the protests. (E:1 and E2:1)
10. The Taxpayer timely filed appeals of those decisions to the Commission.
11. The County Board was served with Notices in Lieu of Summons, and duly answered those Notices.
12. The Taxpayer's appeals were consolidated for hearing by order of the Commission.

13. A Notice and Order for Hearing issued on April 14, 2003, amended July 10, 2003, set a hearing of the Taxpayer's appeals for July 29, 2003, at 2:00 p.m. CDST.
14. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Notice and Order for Hearing was served on all parties.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The subject property is unimproved land lying along the Republican River. (E10:1).
2. The subject property does not lie within the boundaries of a sanitary and improvement district, village or city and is zoned for agricultural use.
3. The Taxpayer purchased the subject property in 2000 for \$110,000.00. (E24:1 and E25:1).
4. Prior to purchase the wasteland and grassland had been used for grazing and wheat had been grown on the dry cropland.
5. The Taxpayer planted corn on the dry cropland during the year 2001 and 2002.
6. The grassland and wasteland were not grazed or used for other agricultural purposes during the year 2001.
7. The Taxpayer placed two buffalo bull calves on the subject property in the spring of 2002. The calves were six months old at the time of purchase and will not be mature enough to use for breeding purposes until they are four years old.

8. The Taxpayer does not own or have current plans to purchase more Buffalo for placement on the subject property.
9. The Taxpayer did not know if production of Buffalo on the subject property could be profitable.
10. Carrying capacity of the subject property for grazing purposes is twenty cow calf pairs.
11. Buffalo consume more forage than cattle but the difference is not significant.
12. The Taxpayer allows hunting with "permission only" on the subject property, but does not receive a fee for access.
13. If Lots 10 & 11 of Section 2, Township 2, Range 33, of the subject property had received special valuation their value would have been \$13,025.00 (20 acres dry X \$390 + 28 acres grass X \$170 + 31 acres waste X 15). (E24:2).
14. The Taxpayer in his protest to the County Board requested a value of \$12,293.19 for that tract. (E1:1).
15. If Lots 9 & 10 Section 3, Township 2, Range 33, of the subject property had received special valuation their value would have been \$6,685.00 (7 acres dry X \$390 + 26 acres grass X \$140 + 21 acres waste X \$15). (E25:2).
16. The Taxpayer in his protest to the County Board requested a value of \$8,403.00 for that parcel. (E2:1).

17. No evidence was introduced in the hearing before the Commission in support of the valuations requested by the Taxpayer nor were any other values proposed by the Taxpayer.
18. The Taxpayer has not adduced sufficient, clear and convincing evidence to overcome the statutory presumption in favor of the County Board.
19. 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 and other land in each parcel of the subject property described in the case files for the tax year 2002 is:

Case No. 02A-239

Agricultural and	
Horticultural land	\$ 7,800.00
Other Land value	<u>\$39,530.00</u>
Total value	<u>\$47,330.00</u>

Case No. 02A-240

Agricultural and	
Horticultural land	\$ 2,730.00
Other Land value	\$31,490.00
Total Value	<u>\$34,220.00.</u>

20. The values of the subject property as of the assessment date determined by the County Board are supported by the evidence.

21. The County Board properly determined eligibility of the subject property for special valuation.
22. The decisions of the County Board were correct and neither arbitrary nor unreasonable.
23. The decisions of the County Board should 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 Commission's rules and regulations or Section 77-5016 (3). Neb. Rev. Stat. §77-5016(3) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9).
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) (2002 Cum. Supp.).

5. Agricultural land and horticultural land shall be valued for 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) (2002 Cum. Supp.)

8. Land located outside the corporate boundaries of any sanitary and improvement district, city, or village, used for agricultural or horticultural purposes and which is zoned predominately for agricultural and horticultural use is eligible for special use valuation. Neb. Rev. Stat. §77-1344(1) (Cum. Supp. 2002).
9. Eligibility of land for special use valuation is determined as of January 1 each year. Neb. Rev. Stat. §77-1344(3) (Cum. Supp. 2002).
10. Agricultural and horticultural use has for purposes of special valuation determinations the meaning specified in section 77-1359. Neb. Rev. Stat. §77-1343(2) (Cum. Supp. 2002).
11. Special valuation means eighty percent of the value that the land would have for agricultural and horticultural purposes without regard to the actual value the land would have for other purposes or uses. Neb. Rev. Stat. §77-1343(6) (Cum. Supp. 2002).
12. Recapture value means eighty percent of the actual value of the land. Neb. Rev. Stat. §77-1343(5) (Cum Supp. 2002).

13. 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) (Cum. Supp. 2002, as amended by 2003 Neb. Laws 291, §9).
14. 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." *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523, (2001).
15. 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).
16. 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).

**IV.
DISCUSSION**

The Taxpayer has appealed denials of applications for special valuation. Special valuation allows agricultural and horticultural land to be valued at eighty percent of its actual or fair market value for use as agricultural and horticultural land without regard to its value for other uses. Neb. Rev. Stats. §77-1343(6) and §77-1344 (1) (Cum Supp. 2002). The procedures for making application for special valuation, consideration of the application, protest to the County Board and appeal are governed by Neb. Rev. Stats. §77-1345 and §77-1345.01. (Cum. Supp. 2002). In summary those sections require an application for special valuation to be filed by June 30, accepted or rejected by July 25, a protest from denial of an application to be filed by August 15, protests must be considered by September 15, and appeals made from adverse decisions made within 30 days of the County Board decision. Id. Eligibility for special valuation is determined in accordance with the provision of Neb. Rev. Stats. §77-1343 and §77-1344 (Cum. Supp. 2002).

To be eligible for special use valuation land must be outside the corporate boundaries of a sanitary and improvement district, city or village, and be zoned for agricultural use. Neb. Rev. Stat. 77-1344(1) (Cum. Supp. 2002). The subject property meets those two conditions. In addition however

eligible land must be used for agricultural and horticultural purposes. Id. Qualification is determined as of January 1. Neb. Rev. Stat. 77-1344(3) (Cum. Supp. 2002). A portion of the subject property, 27 acres of dry crop land, had been valued as agricultural and horticultural land. (E24:2 and E25:2). The grass and waste land portion of the subject property would be eligible for special use valuation if used for agricultural or horticultural purposes as of January 1, 2002. Neb. Rev. Stat. §77-1344 (Cum. Supp. 2002). The Taxpayer asserts that because in the spring of 2002 he placed two buffalo calves on the grass and waste land portion of the subject property, that that land consisting of 106 acres, is eligible for special use valuation. The Taxpayer asserted that prior to 2001 the grass and waste land had been used for pasture but that he had not allowed use of that land for grazing after purchase in 2000. The evidence is that no agricultural or horticultural use was being made of that land as of January 1, 2002. Without agricultural or horticultural use on that 106 acre portion of the subject property was not eligible for special use valuation.

The protest forms filed by the Taxpayer with the County Board request valuation changes. (E1:1 and E2:1). The Taxpayer has appealed under Neb. Rev. Stat. §77-1345.01 (Cum Supp. 2002). An appeal under that section can only be from disapproval of an application for special valuation. Neb. Rev. Stat. §77-1345.01.

(Cum. supp. 2002). A change in value in this instance results from a determination of whether or not the subject property was eligible for special valuation. The Commission could determine whether the subject property is eligible for special use valuation and determine its value accordingly or determine that it was not eligible and determine its value in accordance with that determination. The values applied in each instance would be those values determined by the State Assessing Official or the County Board through the valuation protest process.

The value for grassland and wasteland which did not qualify for special valuation determined by the State Assessing Official for Hitchcock County was \$670 per acre. That value is found in a column captioned recapture value 80% market. (E31:1). Recapture value is 80% of actual value. Neb. Rev. Stat. §77-1343(5) (Cum. supp. 2002). The value which could correctly have been applied is found in a column captioned "recapture value 100% market". That value is \$840 per acre. Since that value is 100% of market it does not represent "recapture value". Id. Recapture value at 80% of actual value is not applicable to assessments in a year land has qualified for special value. That value is used in the year of disqualification. Neb. Rev. Stat. §77-1348 (Cum. Supp. 2002). The portions of the subject property which were not valued as agricultural and horticultural land, or qualified for special valuation should have been valued for assessment purposes

at their actual or fair market value. Neb. Rev. Stats. §77-112 and 77-1344 (Cum. Supp. 2002). Because valuation was not an issue before the Commission by virtue of the Taxpayer's appeal and the County Board had not filed a cross appeal the Commission is without power to correct any error of the State Assessing Official. The Commission does not find that the error of the State Assessing Official for Hitchcock County precluded a determination that special valuation was not applicable.

IV.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the decisions of the County Board determining eligibility for special use valuation and eighty percent of the actual or fair market value of the agricultural land and horticultural land and other land in each parcel of the subject property described in the appeals as of the assessment date, January 1, 2002 as follows:

Case No. 02A-239

Agricultural and	
Horticultural land	\$ 7,800.00
Other Land value	<u>\$39,530.00</u>
Total value	<u>\$47,330.00</u>

Case No. 02A-240

Agricultural and	
Horticultural land	\$ 2,730.00
Other Land value	\$31,490.00
Total Value	<u>\$34,220.00.</u>

are affirmed.

2. That this decision, if no appeal is timely filed, shall be certified to the Hitchcock County Treasurer, and the Hitchcock County State Assessing Official, 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 September 4, 2003.

IT IS SO ORDERED.

Dated September 4, 2003.

Wm. R. Wickersham, Vice-Chair

Susan S. Lore, Commissioner

Robert L. Hans, Commissioner

SEAL