

BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION

PAUL L. LAUBY,)
)
Appellant,) CASE NO. 00A-254
)
vs.) DOCKET ENTRY
) REVERSING THE DECISION
DAWSON COUNTY BOARD OF) OF THE COUNTY
EQUALIZATION,)
)
Appellee.)

The Nebraska Tax Equalization and Review Commission ("Commission") called the above-captioned case for a hearing on the merits of the appeal in the City of Kearney, Buffalo County, Nebraska, on the 29th day of August, 2001, pursuant to a Notice of Hearing issued the 23rd day of May, 2001.

Paul L. Lauby ("the Taxpayer") appeared personally at the hearing. The Dawson County Board of Equalization appeared through Kurt McBride, the Deputy Dawson County Attorney. During the hearing, the Commission took statutory notice of certain information, and each of the parties was afforded the opportunity to present evidence and argument. Each party was also afforded the opportunity to cross-examine witnesses of the opposing party as required by law.

Neb. Rev. Stat. §77-5018 (2000 Cum. Supp., as amended by 2001 Neb. Laws, L.B. 465, §8), 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, after receiving the exhibits and hearing evidence and argument, entered its Findings of Fact, Conclusions of Law, and a Final Order on the merits of the appeal in this case on the record, which were in substance as follows:

I.
FINDINGS OF FACT

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

A.
PROCEDURAL FINDINGS

1. That the Taxpayer is the owner of record of certain agricultural real property legally described as Part of the NE¼ of Section 18, Township 9 North, Range 22, excluding a 4.79 acre tract of land in the Southeast corner, consisting of approximately 157.84 acres, in Dawson County, Nebraska ("the subject property").
2. That the Dawson County Assessor ("the Assessor") proposed valuing the subject property in the amount of \$119,370 for purposes of taxation as of January 1, 2000 ("the assessment date"). (E1).

3. That Taxpayer timely filed a protest of the proposed valuation and requested that the subject property be valued in the amount of \$61,200. (E1).
4. That the protest alleged that the subject property was infested with dagger nematodes and that the infestation adversely impacted the actual or fair market value of the subject property as of the assessment date. (E1).
5. That the County denied the protest. (E1).
6. That thereafter, the Taxpayer timely filed an appeal of the County's decision to the Commission. (Appeal Form).
7. That during the course of the hearing the County stipulated and agreed that the subject property suffered from a nematode infestation since June, 1999. (E10:1)

B.
SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. That the Taxpayer has been active in farming for more than 20-years.
2. That he currently farms approximately 510 acres of land. That this operation includes crop land and grazing land.
3. That the Taxpayer acquired the subject property on March 23, 1993, for \$136,000.

4. That the Taxpayer discovered in July of 1999, that the subject property was infested with dagger nematodes.
5. That the Taxpayer testified that in his opinion the actual or fair market value of the subject property was \$69,462 as of the assessment date due to the dagger nematode infestation.
6. That the Taxpayer based this testimony on the uncontroverted evidence that crop production yields on the subject property have dropped by 70% since 1993.
7. That the Taxpayer, without objection from the County, supported this testimony with evidence showing that his crop insurance company had paid Taxpayer's claim in 1999 for lost crop yields due to the dagger nematode infestation.
8. That the Taxpayer also adduced evidence, again without objection from the County, regarding the steps taken to address the dagger nematode problem since that problem was discovered in 1999. Those management steps included application of 2,600 tons of feedlot manure, 1,100 tons of "green" manure, crop rotation, and the hiring of an agricultural specialist.
9. The County called no witnesses and adduced no testimony. The County did adduce Property Record Files for five

"comparable" agricultural properties in Dawson County.

That, however, nothing in the record establishes that any of these "comparable" properties suffer from a dagger nematode infestation.

10. That the Taxpayer has adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the County.
11. That based on the entire record before it, the Commission finds and determines that 80% of the actual or fair market value of the subject property as of the assessment date was \$55,570 ($\$69,462 \times 80\% = \$55,570$).
12. That the assessed value of the subject property for tax year 2000 as determined by the County is not supported by the evidence.
13. That therefore the decision of the County was both unreasonable and arbitrary.
14. That therefore the decision of the County must be vacated and reversed.

II.
CONCLUSIONS OF LAW

1. That the Commission has jurisdiction over the parties and the subject matter of this appeal.
2. That 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) (2000 Cum. Supp., as amended by 2001 Neb. Laws L.B. 419 §1, 2001 Neb. Laws L.B. 170 §22 and 2001 Neb. Laws L.B. 465 §7). 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. That "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).
4. That the appraisal of real estate is not an exact science. *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N. W. 2d 872, 874 (1977).
5. That "Comparing assessed values of other properties with the subject property to determine actual value has same inherent weakness as comparing sales of other properties with the subject property. The properties must be truly comparable." *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization* 7 Neb. App. 688, 697, 584 N. W. 2d 837, 843 (Neb. App. 1998).

6. That an "owner who is familiar with his or her property and knows its worth is permitted to testify as to its value without further foundation; this principle rests upon the owner's familiarity with the property's characteristics, its actual and potential uses, and the owner's experience in dealing with it. *Schmidt v. Thayer County Bd. of Equalization*, 10 Neb.App. 10, 19, 624 N.W.2d 63, 69 (2001).
7. That where the reasonableness of the board of equalization's valuation is a question of fact based upon all the evidence presented, the taxpayer has the burden of showing such valuation to be unreasonable. Where the record contains little evidence that contradicts the Taxpayer's competent evidence of value the presumption in favor of the Board disappears and the Board's valuation must be found to be unreasonable. *Schmidt v. Thayer County Bd. of Equalization*, 10 Neb.App. 10, 19, 624 N.W.2d 63, 70 (2001).

**III.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the order of the Dawson County Board of Equalization setting the assessed value of the subject property for tax year 2000 is vacated and reversed.

2. That Taxpayer's agricultural real property legally described as the NE $\frac{1}{4}$ of Section 18, Township 9 North, Range 22, excluding a tract on the SW corner 4.79 acres in size, consisting of approximately 157.84 acres in Dawson County, Nebraska, shall be valued as follows for tax year 2000:

Land	\$55,570
Improvements	\$0
Total	\$55,570

3. That this decision, if no appeal is filed, shall be certified to the Dawson County Treasurer, and the Dawson County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (2000 Cum. Supp., as amended by 2001 Neb. Laws L.B. 419 §1, 2001 Neb. Laws L.B. 170 §22, and 2001 Neb. Laws L.B. 465 §7).

4. That this decision shall only be applicable to tax year 2000.

5. That each party is to bear its own costs in this matter.

IT IS SO ORDERED.


I certify that Commissioner Edwards made and entered the above and foregoing Findings and Orders in this appeal on the 29th day

of August, 2001. That Commissioner Hans dissented. That thereafter Commissioner Reynolds approved and confirmed the same. That a quorum of the Commission having approved and confirmed the Findings and Orders in this appeal, the same are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (2000 Cum. Supp., as amended by 2001 Neb. Laws, L.B. 465, §5).

Signed and sealed this 31st day of August, 2001.

SEAL




Mark P. Reynolds, Chairman