

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

STEVEN T. BROCKHAUS,	)	
	)	
Appellant,	)	CASE NO. 00A-37
	)	
vs.	)	DOCKET ENTRY
	)	REVERSING THE DECISION
MADISON 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 Norfolk, Madison County, Nebraska, on the 26<sup>th</sup> day of June, 2001, pursuant to a Notice of Hearing issued the 13<sup>th</sup> day of March, 2001.

Steven T. Brockhaus ("the Taxpayer") appeared personally at the hearing, and the Madison County Board of Equalization appeared through Joseph M. Smith, the Madison 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 located in Madison County, Nebraska ("the subject property").
2. That the Madison County Assessor ("the Assessor") proposed valuing the subject property in the amount of \$105,716 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 \$65,570. (E1;2).
4. That the protest alleged that the subject property was overvalued. (E1).
5. That the County denied the protest. (E1:1).

6. That thereafter, the Taxpayer timely filed an appeal of the County's decision to the Commission. (Appeal Form).

**B.**

**SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS**

1. That the subject property consists of a parcel of land approximately 95 acres in size located in Township 1837, approximately 3 to 4 miles from the City of Madison, Madison County, Nebraska. The property is bounded on the west by Union Creek.
2. That as of January 1, 2000, the County Assessor's records indicated that 78.30 acres of land were in production. That however, due to frequent flooding, the Taxpayer certified to the FSA that only 71 acres of the land are tillable. That the Taxpayer failed to notify the County Assessor of this change in status, or that the property was subject to frequent flooding.
3. That the effects of these factors cannot be determined on the assessed value of the subject property for tax year 2000 based on the record before the Commission.
4. That the Taxpayer offered certain agricultural properties as "comparables." That however, these comparables are parcels of irrigated land with pivots. That these properties are not comparable to the subject property.

5. That the Taxpayer purchased the subject property on January 7, 1999, for \$83,308.75. (E9:1).
6. That the property was purchased through a real estate broker. That the subject property was listed on the open market for at least 30-days. That the subject property was not leased or farmed by the purchaser prior to the purchase. That the transaction, from the record before the Commission, was not between relatives.
7. That from the record before the Commission, this sale and purchase was an "arm's length transaction."
8. That the County had notice of the price paid for the subject property.
9. That although the uncontroverted evidence establishes that the value of agricultural land in Market Area 3 in Madison County increased between January 1, 1999, and January 1, 2000, the County Assessor was unable to testify as to the amount of that increase.
10. That the County's opinion of actual or fair market value for the subject property as of January 1, 2000, is \$132,145. (Assessed value of \$105,716 at 80% of actual or fair market value  $\div$  80% = \$132,415).
11. That, however, nothing in the record would establish that the actual or fair market value of the subject property increased by 59% in a twelve-month period. [(County's

determination of actual or fair market value as of January 1, 2000 in the amount of \$132,415 - Actual or fair market value of the subject property as of January 7, 1999 in the amount of \$83,308.75) ÷ \$83,308.75 = 59.94%].

12. That the Commission must base its decision on the record before it. Neb. Rev. Stat. §77-5016(3) (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).
13. That state law requires that agricultural land be valued at 80% of actual or fair market value. Neb. Rev. Stat. §77-201(2) (2000 Cum. Supp.).
14. That 80% of \$83,308.75 is \$66,647.
15. That based on the entire record before it, the Commission finds and determines that the 80% of the actual or fair market value of the subject property as of the assessment date was \$66,647.
16. That the assessed value of the subject property for tax year 2000 as determined by the County is not supported by the evidence.
17. That therefore the decision of the County was both unreasonable and arbitrary.
18. 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 interpreting 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 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).
4. 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).

5. That "An owner who is familiar with his property and knows its worth is permitted to testify as to its value." *U. S. Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).
6. 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).
7. The fair market value is the " 'value of the property if offered for sale upon the open market as between one who is ready and willing to sell but is not compelled to sell, and one who is ready, able and willing to buy but is not required to buy.' " *McArthur v. Papio-Missouri River Natural Resources Dist.*, 250 Neb. 96, 547 N.W.2d 716, 724 (Neb. 1996). (Citations omitted).
8. That "It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value."



*Forney v. Box Butte County Bd. of Equalization*, 7 Neb. App. 417, 424, 582 N.W.2d 631, 637, (1998).

- 9. That "Evidence of sale price alone may not be sufficient to overcome the presumption that the board of equalization has valued the property correctly. But where, as in this case, the evidence discloses the circumstances surrounding the sale and shows that it was an arm's length transaction between a seller who was not under compulsion to sell and a buyer who was not compelled to buy, it should receive strong consideration." *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982).

**III.  
ORDER**

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

- 1. That the order of the Madison 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 SE ¼ of Section 13, Township 21 North, Range 2 West, consisting of 95 acres more or less, in Madison County, Nebraska, shall be valued as follows for tax year 2000:

Land	\$66,647
Improvements	\$ -0-

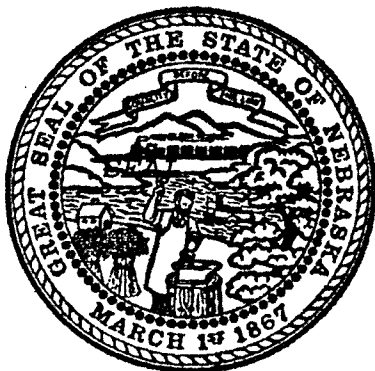
Total                    \$66,647


3. That this decision, if no appeal is filed, shall be certified to the Madison County Treasurer, and the Madison County Assessor, pursuant to Neb. Rev. Stat. §77-5018(2000 Cum. Supp., as amended by 2001 Neb. Laws L.B. 465 § 8).
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 Hans made and entered the above and foregoing Findings and Orders in this appeal on the 26<sup>th</sup> day of June, 2001. The same were approved and confirmed by Commissioner Reynolds and 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 2<sup>nd</sup> day of July, 2001.



  
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Mark P. Reynolds, Chairman