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

PEGGY J. GOLDEN and)	
ALBERT S. GOLDEN,)	
)	CASE NO. 99A-106
Appellants,)	99A-107
)	99A-108
vs.)	99A-109
)	
MORRILL COUNTY BOARD OF)	DOCKET ENTRY
EQUALIZATION,)	AFFIRMING THE DECISION
)	OF THE COUNTY
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 Sidney, Cheyenne County, Nebraska, on the 24th day of August, 2000, pursuant to a Notice of Hearing issued the 14th day of March, 2000.

Peggy J. Golden ("the Taxpayer") appeared personally at the hearing, and the Morrill County Board of Equalization appeared through Jean Rhodes, Morrill County Attorney. During the hearing, the Commission took judicial 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 (1998 Cum. Supp.), 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, which were in substance as follows:

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VALUATION DIVISION

**I.
FINDINGS OF FACT**

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

**A.
PROCEDURAL FINDINGS**

1. That the Taxpayer is one of the owners of record of certain agricultural real property located in the Morrill County, Nebraska (“the subject properties”).
2. That the Morrill County Assessor (“the Assessor”) proposed valuing the subject properties in the amounts shown below for purposes of taxation as of January 1, 1999 (“the assessment date”).
3. That Taxpayer timely filed protests of the proposed valuations and requested that the subject properties be valued in the amounts shown below.

Case No.	Exhibit	Assessor	Taxpayer	County Bd.	Acres
99A-106	1	\$ 69,965	\$ 58,120	\$62,220	480
99A-107	2	\$148,375	\$140,300	\$148,375	480
99A-108	3	\$ 17,600	\$ 13,600	\$17,600	160
99A-109	4	\$ 80,965	\$ 68,200	\$80,965	640
Total		\$316,905	\$280,220	\$309,160	1,760

4. That the protests alleged that the subject properties were overvalued based on a fee appraisal. (E1 - E5).
5. That the County denied the protests in all cases except 99A-106. That in that case the County determined that 80% of the actual or fair market value of the subject property as of the assessment date was \$62,220. (E1 - E5).

6. That thereafter, the Taxpayer timely filed appeals of the County's decisions to the Commission. (Appeal Form).
7. That the Commission consolidated the four appeals for purposes of hearing.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. That the Taxpayer acquired the subject properties by will upon the death of her father. That the Taxpayer has lived on and farmed and ranched the subject properties since approximately 1961.
2. That as part of the probate proceedings following the death of her father, a fee appraisal for the subject property was made. That the appraisal was made by an appraiser licensed by the State of Nebraska.
3. That the fee appraisal determined that the actual or fair market value of the subject properties as of the assessment date was \$310,000. (E5:2). That the Taxpayer's appraiser determined that the actual or fair market value of the improvements component of the subject properties had an actual or fair market value of \$59,354. (E5:19).
4. That the Taxpayer's appraiser determined that the value of the land component was \$252,395. That 80% of that value is \$201,196. That therefore Taxpayer's appraiser's opinion of 80% of actual or fair market value on a per acre basis is \$114. ($\$201,196 \div 1,760 = \114).
5. That the County determined that the 80% of the actual or fair market value of the land component of the subject property is \$258,930. That on a per acre basis 80% the value is \$147.

6. That based on the Taxpayer's requested values (which are the 1998 assessed values of the subject properties), 80% of the actual or fair market value of the land component (\$230,010) on a per acre basis is \$131.
7. That the largest difference between the opinions of 80% of actual or fair market value is \$33 per acre, or approximately 29%.
8. That, however, the Taxpayer testified that her opinion of value was based on the fee appraisal. That the fee appraisal used sales from throughout the County. That the County's opinion of value was based on sales of agricultural land drawn only from Market Area 1, where the subject properties are located.
9. That Taxpayer's appraiser made no adjustments for "location." (E5:43 - 45). That therefore the sales utilized by the Taxpayer's appraiser are not truly representative of the subject property because they do not recognize differences in location between the subject property and the "comparables."
10. Further that the Taxpayer adduced no competent and credible evidence which would establish that the action of the County was unreasonable or arbitrary.
11. Finally that the Taxpayer adduced no clear and convincing evidence which would establish that the valuation decision of the County was unreasonable or arbitrary.
12. That based on the entire record before it, the Commission finds and determines that 80% of the actual or fair market value of the land component of the subject properties as of the assessment date was \$258,930.
13. That the assessed values of the subject properties for tax year 1999 as determined by the County is supported by the evidence.

14. That therefore the decisions of the County were neither unreasonable nor arbitrary.
15. That therefore the decisions of the County must be affirmed.

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 by Neb. Rev. Stat. §77-5016(7) (1999 Supp.) to affirm the decision of the County unless evidence is adduced establishing that the action of the County was unreasonable or arbitrary.
3. 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 . . . In an appeal to the [Commission from the County Board of Equalization] . . . 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.” *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).

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 “It is well established that the value of the opinion of an expert witness is no stronger than the facts upon which it is based.” *Bottorf v. Clay Cty. Bd. Of Equal.*, 7 Neb. App. 162, 167, 580 N.W.2d 561, 565 (1998).
6. 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).
7. 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).
8. That “We recognize that recent and comparable sales of real estate may be admissible as evidence . . . for two different purposes. They may be admitted as substantive proof of value of the condemned property or as foundation and background for an expert's opinion of value. [Citation omitted.] The rule on comparability is not as strict for foundational

purposes as it is when the comparable is used as direct and independent proof of value. However, there still must be a certain degree of similarity for both purposes....” *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization* 7 Neb. App. 688, 697, 584 N. W. 2d 837, 843 (Neb. App. 1998).

**III.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the orders of the Morrill County Board of Equalization setting the assessed values of the subject properties for tax year 1999 is affirmed.
2. That Taxpayer’s agricultural real properties shall be valued as follows as determined by the Morrill County Board of Equalization for tax year 1999:

- a. The W ½ and the SE 1/4 of Section 23, Township 19, Range 51, consisting of approximately 480 acres, in Morrill County, Nebraska, shall be valued as follows:

Land	\$62,200
Improvements	\$ -0-
Total	\$62,200

- b. The W ½ E ½, and the W ½ of Section 26, Township 19, Range 51, consisting of approximately 480 acres, in Morrill County, Nebraska, shall be valued as follows:

Land	\$ 98,165
Improvements	\$ 50,210
Total	\$148,375

- c. The S ½ S ½ of Section 15, Township 19, Range 51, consisting of approximately 160 acres, in Morrill County, Nebraska, shall be valued as follows:

Land	\$17,600
Improvements	\$ -0-
Total	\$17,600

- d. All of Section 22, Township 19, Range 51, consisting of approximately 640 acres, in Morrill County, Nebraska, shall be valued as follows:

Land	\$80,965
Improvements	\$ -0-
Total	\$80,965

- 3. That this decision, if no appeal is filed, shall be certified to the Morrill County Treasurer, and the Morrill County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
- 4. That this decision shall only be applicable to tax year 1999.
- 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 24th day of August, 2000. The same were approved and

confirmed by Commissioner Hans and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5). (1998 Cum. Supp.)

Signed and sealed this 28th day of August, 2000.

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Mark P. Reynolds, Chairman