

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

WARREN R. BLANK, WERNER W. BLANK, and ANNE W. WOLKEN,)	
)	CASE NO. 00A-242
Appellant,)	
)	DOCKET ENTRY
vs.)	REVERSING THE DECISION
)	OF THE COUNTY
MADISON COUNTY BOARD OF 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 27th day of June, 2001, pursuant to a Notice of Hearing issued the 13th day of March, 2001.

Warren R. Blank ("the Taxpayer") appeared personally at the hearing, and the Madison County Board of Equalization appeared through Joel E. Carlson, the Deputy 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 Taxpayers are the owners 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 \$109,898 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 for purposes of taxation in the amount of \$81,162. (E1).
4. That the protest alleged that the subject property is overvalued. (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).

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. That the subject property consists of approximately 82.19 acres of agricultural land legally described as Pt of the SW $\frac{1}{4}$ of Section 3, Township 22, Range 3, in Madison County, Nebraska.
2. That the subject property has no improvements, 3.18 acres of roads (valued at zero); 28.10 acres of Land Valuation Group ("LVG") 1D1, valued at \$1,490 per acre; 36.91 acres of LVG 1D, valued at \$1,440 per acre; 9.30 acres of LVG 3D, valued at \$1,145 per acre; and 4.70 acres of LVG 4D1, valued at \$900 per acre. (E3:3).
3. That Taxpayer, Warren R. Blank, is a licensed real estate salesperson, holding a real estate license since 1976. That the Warren R. Blank also holds a real estate brokers license, and has held that license since 1978. Further that Warren R. Blank has held a Nebraska real estate appraiser's license since 1981.
4. That the Taxpayers established that the subject property is assessed at an average of \$1,337 per acre, which is 80% of actual or fair market value. That therefore the County's opinion of actual or fair market value for the subject

property is \$1,671 per acre. (Agricultural land is to be assessed at 80% of actual or fair market value. Neb. Rev. Stat. §77-201(2) (2000 Cum. Supp.) $\$1,337 \div 80\% = \$1,671$).

5. That the Taxpayers offered 8 "comparable" properties in support of their requested valuation. (E5).
6. That these "comparables" include both dry land and irrigated land sales within Madison County during calendar year 1999 and early 2000. That under usual circumstances, irrigated land sells for a higher price than dry land. That these "comparables" are located in close proximity to the subject property. (E4).
7. That none of the Taxpayers' eight comparables sold for \$1,671 an acre. That all of the Taxpayers' comparables sold for between \$950 and \$1,400 per acre. That 80% of these sale prices would indicate an assessed value range of \$760 to \$1,120 per acre. That as noted above, the Taxpayer's assessed value is \$1,337 per acre, which is more than 80% of the highest sale (on a per acre basis) for the irrigated land sales offered by Taxpayer.
8. That based on these comparable sales, the Taxpayer's opinion of the actual or fair market value of the subject property is \$102,736, or \$1,250 per acre ($\$102,736 \div 82.19$ acres).
9. That there is no evidence in the record to establish that the Assessor personally inspected the subject property.

That the County offered no comparable properties to support its opinion of the actual or fair market value of the subject property as of the assessment date.

10. That the Taxpayers adduced sufficient clear and convincing evidence that the decision of the County was unreasonable and arbitrary.
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 \$82,189. (Taxpayer's opinion of actual or fair market value in the amount of $\$102,736 \times 80\% = \$82,189$).
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 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 (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).

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 PT SW $\frac{1}{4}$ (Tract 2), in Section 3, Township 22, Range 3, consisting of approximately 82.19 acres in Madison County, Nebraska, shall be valued as follows for tax year 2000:

Land	\$82,189
Improvements	\$ -0-
Total	\$82,189

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.

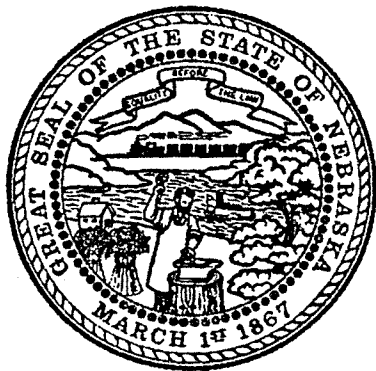
5. That each party is to bear its own costs in this matter.


IT IS SO ORDERED.

I certify that Commissioner Hans made and entered the above and foregoing Findings and Orders in this appeal on the 27th day of June, 2001. The same were approved and confirmed by Commissioner Edwards, 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 29th day of June, 2001.

SEAL





Mark P. Reynolds, Chairman