

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

WERNER W. BLANK,)	
)	
Appellant,)	CASE NO. 00A-244
)	
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 27th day of June, 2001, pursuant to a Notice of Hearing issued the 13th day of March, 2001.

Werner W. Blank ("the Taxpayer") appeared personally and with his brother, Warren R. Blank, 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 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 \$91,006 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 \$67,706. (E1).
4. That the protest alleged that the subject property was 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 a tract of land approximately 71.42 acres in size legally described as Pt of W $\frac{1}{2}$ SE $\frac{1}{4}$ less Hiway in Section 29, Township 22, Range 1, Madison County, Nebraska.
2. That the Taxpayer's brother testified that the subject property was acquired in 1993 for approximately \$78,800.
3. That the subject property is, according to the Assessor's records, all devoted to dry land farming, except for 2.44 acres of roads. That the Soil Inventory indicates that 13.80 acres of land are classified as Land Valuation Group ("LVG") 1D; 2.30 acres of LVG 2D1; 43.98 acres of LVG 2D; 6.40 acres of LVG 3D1; and .40 acres of LVG 3D. (E3:3).
4. That the Taxpayer's brother testified that the property was subject to frequent flooding which adversely impacted approximately 17 acres, and further testified that 13 acres of land was improperly classified as "dry" when in fact those acres are grassland.
5. That in support of his opinion of value, the Taxpayer adduced three "comparable" sales.

6. That Taxpayer's first "comparable" (E7) consists of two tracts of land. The first "comparable" consists of a tract of land approximately 40-acres in size which sold December 15, 1998, for \$117,000 (or \$975 per acre = $\$117,000 \div 120$ acres). (E7:1). That the Soil Inventory for this tract shows 20.00 acres of dry land; 15.10 acres of Grassland; 2.90 acres of treed canopy; and 1 acre of roads. (E7:3). That the second tract consists of a tract of land approximately 80-acres in size. That the Soil Inventory for this tract shows 63.10 acres of dry land; 12.80 acres of grass; and 4.10 acres of roads. (E7:5). That the total sale was for 120 acres.
7. That Taxpayer's second comparable (E8) is a sale of a tract of land for \$73,000 (or \$1,080 per acre = $\$73,000 \div 67.50$ acres), on February 20, 1998. (E8:1). That the tract of land is approximately 67.50 acres of land. (E8:3). That the Soil Inventory for this tract shows 34.16 acres of dry; 30 acres of grass; and 3.34 acres of roads.
8. That Taxpayer's third comparable (E9) is a sale of a tract of land for \$98,000 (or \$1,225 per acre = $\$98,000 \div 80$ acres), in November of 1999. (E9:1). That the Soil Inventory for this tract shows 79.00 acres of dry land; and 1.00 acres of roads for a total of 80 acres.

9. That when utilizing land sales for purposes of comparison, "No two parcels of land are exactly alike. They might be identical in size and physical characteristics, but each parcel has a unique location and is likely to differ from other parcels in some way. Typical differences requiring adjustments are in time of sale, location, and physical characteristics. Adjustments may also need to be made for atypical financing. Other differences may become apparent with the study of the environmental (physical), economic, governmental, and social factors affecting the sale property and the subject property." *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 76.
10. That none of the sale prices for the comparable properties are adjusted for time.
11. That the first and second "comparable" sales are not comparable to the subject in terms of size. That no adjustments were made to these sale prices for the differences in size.
12. That neither of these comparable sale properties, in the absence of appropriate adjustments, are truly "comparable" to the subject property as that term is defined under professionally accepted mass appraisal methodologies.

13. That the third "comparable," which sold for \$98,000, originally had an assessed value of \$98,036. (E9:4). That for reasons which do not appear in the record, the County reduced the assessed value of that property to \$87,754, or a reduction of approximately \$128 per acre ($\$98,000 - \$87,754 = \$10,246 \div 80 \text{ acres} = \128 per acre).
14. That although this one "comparable" sale property's assessed value was lowered by the County and the subject property was not, the Commission cannot conclude that the value of the subject property should be reduced based on this one "comparable" sale property. There is nothing in the record to establish the basis for why the County reduced the assessed value of that "comparable" property, therefore there is no justification for reducing the assessed value of the subject property on this basis.
15. That the subject property has an assessed value of \$1,274 per acre. (Assessed value of \$91,006 \div 71.42 acres = \$1,274.34).
16. That, however, the uncontroverted evidence establishes that 13 acres of Soil Symbol "Gk" land is valued by the County as "Dry Cropland" when it is in fact grass land.
17. That the record disclosed that 13 acres of the LVG 2D should be reclassified as LVG 2G, which has an assessed value of \$445 dollars per acre. (E18:1).

18. That therefore the assessed value as determined by the County must be reduced by 13 acres of 2D (13 x \$1,290) and then the value of the 13 acres as 2G be added back in (13 x \$445). ($\$91,006 - \$16,770 + \$5,785 = \$80,021$). (E13:3; E18:1).
19. 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 \$80,021.
20. That the assessed value of the subject property for tax year 2000 as determined by the County is not supported by the evidence.
21. That therefore the decision of the County was both unreasonable and arbitrary.
22. 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 "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 "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).
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 of W $\frac{1}{2}$ SW $\frac{1}{4}$ less Hiway in Section 29, Township 22, Range 1, Madison County, Nebraska, consisting of approximately

71.42 acres of land, shall be valued as follows for tax year 2000:

Land \$80,021

Improvements \$ -0-

Total \$80,021

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 Edwards 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 Hans 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