

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

R & J BAHENSKY FARMS LIMITED)			
PARTNERSHIP, A Nebraska	)	CASE NUMBERS:		
Limited Partnership, et al.,)			
	)	03A-11	03A-12	03A-13
Appellants,	)	03A-14	03A-15	03A-16
	)	03A-17	03A-18	03A-19
vs.)			
)			
HOWARD COUNTY BOARD OF)			
EQUALIZATION,	)		FINDINGS AND	
	)		FINAL ORDER	
Appellee.)			

Appearances:

For the Appellant: Arend Baack, Esq.
Attorney at Law
P.O. Box 790
Grand Island, NE 68802

For the Appellee: Karin Noakes, Esq.
Howard County Attorney
612 Indian Street, Suite 10
St. Paul, NE 68873

Before: Commissioners Hans, Lore, Reynolds, and Wickersham.

**I.
STATEMENT OF THE CASE**

Ronald J. Bahensky ("the Taxpayer") is one of the owners of record, or a General Partner of the owner of record, of certain agricultural real property located in Howard County, Nebraska ("the subject properties").

The subject property in Case Number 03A-11 is a tract of land approximately 319 acres in size legally described as the E½ of Section 5, Township 14, Range 9, Howard County, Nebraska. (E1; E12:1). The subject property in Case Number 03A-12 is a

tract of land approximately 318 acres in size legally described as the $W\frac{1}{2}$ Excluding 2 acre tract in $SW\frac{1}{4}$ of Section 5, Township 14, Range 9, Howard County, Nebraska. (E2; E13:1). The subject property in Case Number 03A-13 is a tract of land approximately 80 acres in size legally described as the $W\frac{1}{2}SW\frac{1}{4}$ of Section 7, Township 14, Range 9, Howard County, Nebraska. (E3; E14:1). The subject property in Case Number 03A-14 is a tract of land approximately 80-acres in size legally described as the $S\frac{1}{2}NE\frac{1}{4}$ Section 10, Township 14, Range 9, Howard County, Nebraska. (E4; E15:1). The subject property in Case Number 03A-15 is a tract of land approximately 160 acres in size legally described as the $NW\frac{1}{4}$ Section 11, Township 14, Range 9, Howard County, Nebraska. (E5; E16:1). The subject property in Case Number 03A-16 is a tract of land approximately 158.3 acres in size legally described as the $NW\frac{1}{4}$, except 1.17 Acres State, of Section 14, Township 14, Range 9, Howard County, Nebraska. (E6; E17:1). The subject property in Case Number 03A-17 is a tract of land approximately 120 acres in size legally described as the $NE\frac{1}{4}NE\frac{1}{4}$ & $S\frac{1}{2}NE\frac{1}{4}$ in Section 15, Township 14, Range 9, Howard County, Nebraska. (E7; E18:1). The subject property in Case Number 03A-18 is a tract of land approximately 157 acres in size legally described as the $NW\frac{1}{4}$ exc 3.01 acre tract of Section 15, Township 14, Range 9, Howard County, Nebraska. (E8; E19:1). The subject property in Case Number 03A-19 is a tract of land approximately 150 acres in size

legally described as the SW¼ of Section 23, Township 14, Range 9, Howard County, Nebraska. (E9; E20:1).

The Howard County Assessor ("the Assessor") determined that the assessed value of the subject properties as of January 1, 2003 ("the assessment date") were those amounts shown below. (E1 - E9). The Taxpayer timely protested these determinations of value and alleged that the assessed values exceeded 80% of actual or fair market value. The Taxpayer also alleged that the assessed values were not equalized with comparable properties. (E1 - E9). The Taxpayer therefore requested the "equalized" values set forth below. The Board denied each of the protests. (E1 - E9).

Case No.	Assessor's Proposed Value	Taxpayer's Requested Value	Board's Value	Exhibit
03A-11	\$ 145,390	\$ 121,358	\$ 145,390	1
03A-12	\$ 144,374	\$ 120,867	\$ 144,374	2
03A-13	\$ 35,679	\$ 29,941	\$ 35,679	3
03A-14	\$ 88,163	\$ 62,086	\$ 88,163	4
03A-15	\$ 171,043	\$ 122,000	\$ 171,043	5
03A-16	\$ 199,932	\$ 144,231	\$ 199,932	6
03A-17	\$ 128,011	\$ 89,743	\$ 128,011	7
03A-18	\$ 152,508	\$ 106,995	\$ 152,508	8
03A-19	\$ 152,637	\$ 107,431	\$ 152,637	9

The Taxpayer timely appealed each of the Board's decision on decisions on August 12, 2003. The Commission served a Notice in Lieu of Summons on the Board on August 22, 2003. The Board filed

an Answer out of time, but without objection from the Taxpayer, on January 14, 2004. The Commission consolidated each of the appeals for purposes of hearing and issued an Order for Hearing and Notice of Hearing to each of the Parties on April 9, 2004. An Affidavit of Service in the Commission's records establishes that copies of each of the Orders, the Notice of Hearing, and an Amended Notice of Hearing was served on each of the Parties.

The Commission called the case for a hearing on the merits of the appeal in the City of Kearney, Buffalo County, Nebraska, on June 30, 2004. The Taxpayer appeared personally and with counsel, Arend R. Baack, Esq., at the hearing. The Board appeared through Karin Noakes, Esq. the Howard County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer.

II. ISSUES

The issues before the Commission are (1) whether the Board's decisions to deny the Taxpayer's protests were incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determinations of value were unreasonable.

III.
APPLICABLE LAW

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the Board's decision was incorrect and (2) that the Board's decision was unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7)(Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51)). The "unreasonable or arbitrary" element requires clear and convincing evidence that the Board either (1) failed to faithfully perform its official duties; or (2) failed to act upon sufficient competent evidence in making its decision. The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the Board's value was unreasonable. *Garvey Elevators v. Adams County Bd.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

IV.
FINDINGS OF FACT

The Commission finds and determines that:

1. The value of the improvements, the value of the farm home site, and the value of the farm site in Case Number 03A-15 is not at issue. (E16).
2. The Taxpayer testified that in his opinion the value of his properties used as grass land was approximately \$400 to \$500 per acre. The Taxpayer testified that in his opinion the

actual or fair market value of his irrigated land was, in all instances except 1, between \$1,000 and \$1,100 per acre. In one instance the Taxpayer's opinion of value for irrigated land was between \$1,100 and \$1,200 per acre.

3. The Taxpayer's request for equalization is based on sales of properties offered as "comparables" and the value determined by the Assessor for Market Area 7200.

V. ANALYSIS

The Taxpayer alleges (1) that his properties' assessed values exceed 80% of actual or fair market value and (2) that his properties' assessed values are not equalized with comparable properties. (E1 - E9). The Taxpayer's evidence regarding actual or fair market value consists of two elements: opinion evidence and evidence of sales prices paid for properties which the Taxpayer alleges are comparable to the subject property. All of the Taxpayer's properties at issue in these appeals are located in Agricultural Market Area 7100. (E12 - E19).

The Taxpayer's own evidence establishes that there were 22 sales during the three-year sales study period with a median of 59.42%. The median for the other two agricultural market areas are 76.25% and 78.63%. (E35:1). The median of the assessment to sales ratio is required by law to fall between 74% and 80%. Neb. Rev. Stat. §77-5023(3). The median of the assessment to sales

ratios for Market Area 7100 are significantly below the acceptable range and are lower than the medians for the other two Agricultural Market Areas. This evidence establishes that the assessed values for agricultural land in Agricultural Market Area 7100 are significantly below the 80% of actual or fair market value required by law. Neb. Rev. Stat. §77-201(Reissue 2003). This evidence also establishes that agricultural real property within Agricultural Market Area 7100 is assessed at a lower percentage of actual or fair market value than agricultural real property in the other agricultural market areas. (E35).

The Taxpayer offered evidence of prices paid for some of the 22 sales used in the 2003 Agricultural Sales Study in support of his opinion of value and in support of his equalization request. (E21 - 32). The more inclusive sales study of 22 sales for Agricultural Market Area 7100 indicated a median of 59.42%. (E35:1). Use of the median indicates that half of the properties sold with an assessment to sales ratio of more than 59.42%, and half of the properties sold had an assessment to sales ratio of less than 59.42%. The Taxpayer's use of only some of the sales would indicate a selective choice of comparables which favors the Taxpayer's opinion.

Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of

assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that no one part is compelled to pay a disproportionate share of the tax. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. However, the burden is on the taxpayer to show by clear and convincing evidence that the valuation placed upon the taxpayer's property when compared with valuation placed on other similar property is grossly excessive. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).

The Taxpayer testified that in his opinion the actual or fair market value of grassland for the subject properties was \$400 to \$500 per acre. The Taxpayer offered two sales of grassland in Area 7300 in support of his opinion of value. These two tracts of grassland sold for \$398 per acre and \$393 per acre respectively. (E25; E26). One sale was by an estate and the second sale was based on the prior sale by the estate. One of the two sales was a private auction sale. These two sales do not establish the value of grassland in Agricultural Market Area 7100.

The Taxpayer testified that in his opinion the actual or fair market value for irrigated land for the subject property was predominantly \$1,000 to \$1,100 for irrigated land. The Taxpayer

testified that in his opinion the actual or fair market value of irrigated land for one of the subject properties was \$1,100 to \$1,200 per acre. The Taxpayer's evidence included two sales of irrigated land (Exhibits 30 and 21). One sold for \$1,778 and \$1,875 respectively. The Taxpayer's own evidence does not support his opinion of value for irrigated land.

Selectively using some of the 22 sales to support the Taxpayer's opinions of value and requests for equalization does not rise to the level of clear and convincing evidence of either value or a lack of equalization. The Taxpayer has also failed to adduce any evidence that the per acre values used to establish the value of his property was the result of an intentional and deliberate discrimination systematically applied. *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984).

The Taxpayer has failed to meet his burden of proof for either his valuation claim or his equalization claim. The Board's decisions must accordingly be affirmed.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Parties and over the subject matter of this appeal.
2. The Commission is required to affirm the decision of the Board unless evidence is adduced establishing that the

Board's action was incorrect and either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).

3. The Board is presumed to have faithfully performed its official duties in determining the actual or fair market value of the property. The Board is also presumed to have acted upon sufficient competent evidence to justify its decision. These presumptions remain until the Taxpayer presents competent evidence to the contrary. If the presumption is extinguished the reasonableness of the Board's value becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests on the Taxpayer. *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).
4. "Actual value" is defined as the market value of real property in the ordinary course of trade, or the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's-length transaction, between a willing buyer and willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. Neb. Rev. Stat. §77-112 (Reissue 2003).

5. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that no one part is compelled to pay a disproportionate share of the tax. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. However, the burden is on the taxpayer to show by clear and convincing evidence that the valuation placed upon the taxpayer's property when compared with valuation placed on other similar property is grossly excessive. *Cabela's, Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).
6. Where "the discrepancy was not the result of an error of judgment but was a deliberate and intentional discrimination systematically applied" the Taxpayer's right to relief is clear. "The right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the

standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law." *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984).

7. The Taxpayer has failed to adduce clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary.
8. The Taxpayer has failed to adduce clear and convincing evidence that the Board's determination of value was unreasonable. The Board's decisions accordingly must be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Howard County Board of Equalization's Orders setting the assessed value of the subject property for tax year 2003 are affirmed.
2. The Taxpayer's real property shall be valued as follows:
 - a. In Case Number 03A-11 the Taxpayer's agricultural real property legally described as E½ of Section 5, Township 14, Range 9, Howard County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$145,390
Improvements	\$ -0-
Total	\$145,390

- b. In Case Number 03A-12 the Taxpayer's agricultural real property legally described as the W $\frac{1}{2}$ exc 2 acre Tract in Section 5, Township 14, Range 9, Howard County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$144,374
Improvements	\$ -0-
Total	\$144,374

- c. In Case Number 03A-13 the Taxpayer's agricultural real property legally described as the W $\frac{1}{2}$ SW $\frac{1}{4}$ in Section 7, Township 14, Range 9, Howard County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$ 35,679
Improvements	\$ -0-
Total	\$ 35,679

- d. That in Case Number 03A-14 the Taxpayer's agricultural real property legally described as S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 10, Township 14, Range 9, Howard County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$ 88,163
Improvements	\$ -0-
Total	\$ 88,163

e. That in Case Number 03A-15 the Taxpayer's agricultural real property legally described as the NW $\frac{1}{4}$ of Section 11, Township 14, Range 9, Howard County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$171,043
Improvements	\$ 17,957
Total	\$189,000

f. That in Case Number 03A-16 the Taxpayer's agricultural real property legally described as the NW $\frac{1}{4}$ exc 1.17 acres State, Section 14, Township 14, Range 9, Howard County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$199,932
Improvements	\$ -0-
Total	\$199,932

g. That in Case Number 03A-17 the Taxpayer's agricultural real property legally described as the NE $\frac{1}{4}$ NE $\frac{1}{4}$ & S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 15, Township 14, Range 9, Howard County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$128,011
Improvements	\$ -0-
Total	\$128,011

h. That in Case Number 03A-18 the Taxpayer's agricultural real property legally described as the NW $\frac{1}{4}$ of Section

15, Township 14, Range 9, Howard County, Nebraska,
shall be valued as follows for tax year 2003:

Land	\$152,508
Improvements	\$ -0-
Total	\$152,508

- i. That in Case Number 03A-19 the Taxpayer's agricultural real property legally described as SW $\frac{1}{4}$ of Section 23, Township 14, Range 9, Howard County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$152,637
Improvements	\$ -0-
Total	\$152,637

3. Any request for relief by any Party not specifically granted by this order is denied.
4. This decision, if no appeal is filed, shall be certified to the Howard County Treasurer, and the Howard County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).
5. This decision shall only be applicable to tax year 2003.

6. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

I certify that Commissioner Lore made and entered the above and foregoing Findings and Orders in this appeal on the 30th day of June, 2004. Commissioner Hans dissented and would have granted relief based on the Taxpayer's valuation claim. Commissioners Reynolds and Wickersham approved and confirmed the Findings and Order entered by Commissioner Lore. The same are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Reissue 2003).

Signed and sealed this 1st day of July, 2004.

SEAL

Wm. R. Wickersham, Chair