

BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION

MYRON K. BEATTY and WINIFRED)
KAY BEATTY,)

Appellants,)

vs.)

SIOUX COUNTY BOARD OF)
EQUALIZATION,)

Appellee.)

CASE NO. 97R-372

FINDINGS AND ORDERS

Filed September 9, 1998

Appearances:

For the Appellant: Winifred Kay Beatty
720 S-D Road
Morrill, NE 69358

For the Appellee: J. Adam Edmund
Deputy Sioux County Attorney
P. O. Box 156
Harrison, NE 69346-0156

Before: Commissioners Edwards, Hans and Reynolds

Reynolds, Chairman, for the Commission:

SUMMARY OF DECISION

The Commission affirms the decision of the Sioux County Board of Equalization which denied Taxpayer's protest, and denies Taxpayer's request for a reduction in the assessed value of the subject property.

NATURE OF THE CASE

Myron R. Beatty and Winifred Kay Beatty ("Taxpayers") own certain agricultural real property located in Sioux County, Nebraska. Taxpayers filed a protest with the Sioux County Board of Equalization ("County") alleging that their agricultural land was improperly classified and further was valued in excess of fair market value. By way of relief, Taxpayers requested that the proposed 1997 valuation of \$47,214 be reduced. County recognized a change in the land use of the subject property, removed a "home site" and "other site" and determined the assessed value of the subject property to be \$47,286, from which decision Taxpayers appeal.

EVIDENCE BEFORE THE COMMISSION

The Commission, pursuant to Title 442, Nebr. Admin. Code, Chapter 5, Section 002.05, ordered the following cases consolidated for purposes of hearing: Case Numbers 97R-369; 97R-370; 97R-371; 97R-372; 97R-373; 97R-374; 97R-375; 97R-376; 97R-377; 97R-378; 97R-379; and 97R-380. Judicial notice was taken, without objection, of the pleadings in each Case File; the *Marshall Swift Residential Cost Handbook*; the *Nebraska Assessor's Reference Manuals*, Volumes 1 and 2; the *Nebraska Agricultural and Horticultural Land Valuation Manual*; the Nebraska Constitution; the Nebraska State Statutes; Title 442 of the Administrative Code (the Tax Equalization and Review Commission's Rules and Regulations); the standard reference works *Property Assessment Valuation, Second Edition*; *Property Appraisal and Assessment Administration*; and *Glossary for Property Appraisal and Assessment* all published by the International Association of Assessing Officers; the Property Tax Division of the Department of Revenue's published 1997 ratios and measures of central tendency which are

published pursuant to Neb. Rev. Stat. §77-1327(6); the 1997 County Profiles for Sioux County; the 1997 Equalization Proceedings of the Tax Equalization and Review Commission; the *Uniform Standards of Profession Appraisal Practices*, 1997 Edition; the Preliminary Soil Survey for Sioux County; *Title 298, Nebraska Administrative Code* (the Nebraska Real Estate Appraiser Board's Rules and Regulations); the Nebraska Real Estate Appraiser Board Certification Requirements; and the Nebraska Real Estate Appraiser Board Education Core Curriculum. The Commission also received and considered certain exhibits and testimony during the course of the hearing.

ANALYSIS

Neb. Rev. Stat. §77-1502 (Reissue 1996) requires a taxpayer to identify the issues to be presented to the County Board of Equalization. The Commission's jurisdiction is limited to those issues presented to the County Board of Equalization. Neb. Rev. Stat. §77-1511 (Reissue 1996). The issues before the Commission are, therefore (1) classification and (2) fair market value. (Exhibit 1).

Taxpayers contended at the hearing before the County that the property was misclassified. The County Assessor had determined that there were a total of 52.68 acres of Land Valuation Group (LVG) 2A1 land for tax year 1997. As a result of the protest, the County Assessor determined that the correct total of 2A1 land was 52.86 acres. (The County Assessor also reclassified .04 acres of home site and .14 acres of "other site" as 2A1 land, as shown on the soil inventory worksheet found at Exhibit 3, p. 4). Taxpayers also challenged the classification of the subject property as LVG 2A1 and 2A, when for tax year 1996 the classification had been

2A, 2A1, and 3A1. (Exhibit 3, p. 4). The subject property had been valued at \$39,805 for tax years 1993, 1994, 1995, and 1996. (Exhibit 7, p. 2). For tax year 1997, a new soil survey was implemented, and the land reclassified. The results of the new classification, and the 1997 values for each LVG, is set forth in Exhibit 3, p. 4. The total assessed value for tax year 1997 as determined by the County Assessor was \$47,214. As a result of the correction in land use, and the removal of the home and other sites, the County determined the assessed value of the subject property to be \$47,286. (Exhibit 1).

The record establishes that the soil survey was conducted by the United States Department of Agriculture Soil Conservation Service. The federal agency employs soil scientists who take a number of soil samples from each county. The soil samples are analyzed, and the soil types and capability units are identified by the soil scientists. The Soil Survey is then published by the Soil Conservation Service. The Property Tax Division of the Nebraska Department of Revenue then converts the soil capability units into Land Valuation Groups (LVG's). These LVG's are promulgated by the Property Tax Division of the Nebraska Department of Revenue. The LVG's are published in the *Nebraska Agricultural Land Valuation Manual*, which the County Assessors are obliged by law to utilize in the valuation of agricultural land. *See, e.g.*, Neb. Rev. Stat. §77-1361 (Reissue 1996). The *1997 Nebraska Agricultural Land Valuation Manual* ("Agland Manual") establishes a broad range of values for each LVG within the County. The per acre ranges of value for each LVG in Sioux County for tax year 1997 may be found in the *Agland Manual* at p. 93. The Sioux County Assessor, based on a market study, determined the assessed value of each LVG as set forth in Exhibit 8, page 31. Some of the Grass LVGs per acre assessed values dropped between 1996 and 1997. (Exhibit 8, p. 31). The

sales of similar agricultural land which led to this determination are set forth in the record in Exhibit 9.

Taxpayer offered Exhibit 2, an appraisal dated June 7, 1995, for an unrelated parcel of agricultural land in Sioux County. No evidence was adduced to establish the comparability of that land to the subject property, or to correlate the 1995 value of that property with the 1997 assessed value of the subject property. Taxpayer also offered no evidence to establish that the soil survey was flawed, or that the classification of the subject property was not in accordance with the *Agland Manual*. In short, no evidence was adduced which would establish that the decision of the County was unreasonable or arbitrary.

FINDINGS OF FACT

The Commission, in determining cases, is bound to consider only that evidence which has been made a part of the record before it. No other information or evidence may be considered. Neb. Rev. Stat. §77-5016 (3) (Reissue 1996). The Commission may, however, evaluate the evidence presented utilizing its experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016 (5) (Reissue 1996).

From the pleadings and the evidence contained in the record before it, the Commission finds and determines as follows:

1. That Taxpayers are the owners of record of certain agricultural real property as legally described in the petition ("subject property").
1. That the County Assessor proposed valuing the subject property for purposes of taxation for tax year 1997 in the amount of \$47,214.

2. That Taxpayers timely filed a protest of that determination of value to the Sioux County Board of Equalization ("County").
3. That the basis for the protest was the allegation that the land was improperly classified and the value established by the County Assessor exceeded fair market value.
4. That the Taxpayers requested that the assessed value as determined by the County Assessor be reduced.
5. That the assessed value of the subject had been unchanged since 1993.
6. That the County denied the protest.
7. The County reviewed the land use and classification, and raised the assessed value of the subject property to \$47,286.
8. That Taxpayers thereafter timely filed an appeal of that decision to the Commission.
9. That the County Assessor implemented the most recent soil conversion as promulgated by the Property Tax Division of the Nebraska Department of Revenue for tax year 1997.
10. That the soil conversion was based on a new soil survey for Sioux County.
11. That the soil survey was conducted by the United States Department of Agricultural Soil Conservation Service.
12. That no evidence was adduced to establish that the classification of the subject property as determined by the County was unreasonable or arbitrary.
13. That no evidence was adduced to establish that the value of the subject property as determined by the County Board was unreasonable or arbitrary.
14. Further that the assessed value of the subject property for tax year 1997 is supported by the evidence.

JURISDICTION

Jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (1997 Supp.).

STANDARD OF REVIEW

The Commission must affirm the decision of the county board of equalization unless the appellant demonstrates by a preponderance of the evidence that the decision made by the county board of equalization was not governed by reason, was absurd, exceeded the bounds of reason or moderation, or was made in disregard of the facts or circumstances and without some basis which would lead a reasonable person to the same conclusion. Title 442, Nebraska Administrative Code, Chapter 5, Section 018. *See also Harrison Square v. Sarpy Cty. Bd. Of Equal.*, 6 Neb. App. 454 (1998).

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. §77-1511 (Reissue 1996) to affirm the decision of the County unless evidence is adduced establishing that the action of the County was unreasonable or arbitrary.
3. That based on the record before the Commission, no evidence has been adduced to establish that the action of the County in this case was unreasonable or arbitrary.

4. That the Taxpayer has failed to establish by a preponderance of the evidence that the decision of the Sioux County Board of Equalization was unreasonable or arbitrary.
5. That the Commission must, therefore, and hereby does conclude as a matter of law that the decision of the Sioux County Board of Equalization which set the assessed value of the subject property for purposes of taxation at \$47,286 for tax year 1997 was neither unreasonable nor arbitrary.
6. Further that the decision of the Sioux County Board of Equalization must be affirmed.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the order of the Sioux County Board of Equalization setting the assessed value of the subject property for tax year 1997 at \$47,286 is affirmed.
2. That Taxpayers' real property legally described as Part of the S 1/2 of the SW 1/4 (except for 3 acres) of Section 16, Township 24, Range 57, consisting of 77 acres, more or less, in Sioux County, Nebraska, shall be valued as follows for tax year 1997:

Land	\$47,286
Improvements	\$ -0-
Total	\$47,286

3. That this decision, if no appeal is filed, shall be certified within thirty days to the Sioux County Treasurer, and the Sioux County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).

4. That this decision shall only be applicable to tax year 1997.
5. That each party is to bear its own costs in this matter.

IT IS SO ORDERED.

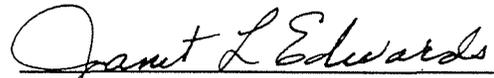
Dated this 9th day of September, 1998.



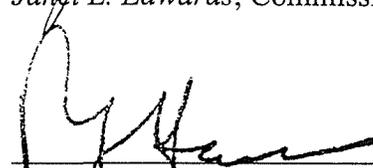
Seal



Mark P. Reynolds, Chairman



Janet L. Edwards, Commissioner



Robert L. Hans, Commissioner