

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

VIVIAN HAGEMAN,)	
)	
Appellant,)	Case No. 98A-241. Case No. 98A-242
)	Case No. 98A-243. Case No. 98A-244
vs.)	
)	
DAWES COUNTY BOARD OF EQUALIZATION.)	FINDINGS AND ORDERS
)	DISMISSING APPEALS FOR
)	FAILURE TO OVERCOME
Appellee.)	STATUTORY PRESUMPTION
)	

Filed: December 17, 1999

Appearances:

For the Appellant: Vivian Hageman
 900 W. 7th
 Chadron, NE 69337

For the Appellee: Dennis D. King
 Special Counsel, Dawes County Board of Equalization
 P. O. Box 302
 Gordon, NE 69343-0302

Before: Commissioners Edwards, Hans and Reynolds

Edwards, Commissioner, for the Commission:

SUMMARY OF DECISION

The Tax Equalization and Review Commission grants the Motion of the Dawes County Board of Equalization to dismiss Taxpayer's appeal, and denies Taxpayer's request for a reduction in the assessed value of the subject property.

PROCEDURAL HISTORY

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 Chadron, Dawes County, Nebraska, on the 16th day of September, 1999, pursuant to a Notice of Hearing issued the 22nd day of July, 1999.

Vivian Hageman ("Taxpayer") appeared personally and with her son-in-law James A. Lees at the hearing. The Dawes County Board of Equalization ("County") appeared through Dennis D. King Special Counsel for the Dawes County Board of Equalization. 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, makes and issues the following Findings of Fact, Conclusions of Law, and Final Orders in these appeals.

EVIDENCE BEFORE THE COMMISSION

The Commission took notice of the following documents as authorized by Neb. Rev. Stat. §77-5016 (1998 Cum. Supp.) without objection: the Commission's case file for Case No. 98A-310 & 98A-311; the Tax Equalization and Review Commission Brochure; the Nebraska Constitution; the Nebraska State Statutes; 1999 Neb. Laws, L.B. 140; 1999 Neb. Laws, L.B. 36;

1999 Neb. Laws, L.B. 194; *Title 442, Nebraska Administrative Code* (the Tax Equalization and Review Commission's Rules and Regulations); *Title 298, Nebraska Administrative Code* (the Nebraska Real Estate Appraiser Board Rules and Regulations); The Property Tax Administrator's Published *1998 Ratios and Measures of Central Tendency*, and the 1998 County Profiles for Dawes County; the Property Tax Administrators *1998 Statistical Measures*; 1998 Assessor's Interviews by the Property Tax Division; 1998 Qualified Sales Report; *1999 Formal Plan of Equalization*; *1998 Statewide Equalization Proceedings*; *Nebraska Real Estate Appraiser Board Certification Requirements* (Jan. 1998); *Nebraska Real Estate Appraiser Board Education Core Curriculum* (Jan. 1998); *Marshall Swift Residential Cost Handbook*; *Marshall Swift Residential Cost Handbook* (Historical Information: *Nebraska Economic Data BIN* Nebraska Department of Economic Development (1998); *Nebraska Agricultural Land Valuation Manual* (1998); *Nebraska Assessor's Reference Manual* - Volumes 1 and 2 (Reissue 1998); Three standard reference works published by the International Association of Assessing Officials: *Property Assessment Valuation, Second Edition*, Published in 1996. *Property Appraisal and Assessment Administration*, published in 1990, and the *Glossary for Property Appraisal and Assessment*, published in 1997; the Soil Survey for Dawes County; *Uniform Standards of Appraisal Practices* (1999).

The Commission also received certain exhibits and testimony during the course of the hearing. The Commission denied the receipt of Exhibits No. 6 and 8.

FINDINGS OF FACT

1. That the Taxpayer is the owner of record certain agricultural real property as described in the petition ("subject properties").
2. That the Dawes County Assessor ("Assessor") proposed valuing the subject properties at 80% of actual or fair market value for purposes of taxation for tax year 1998 as follows:
(E1, E2, E3, E4).

Case No.	Land at 80% of FMV*	FMV* of Improvements	Totals	Ex. No.
98A-241	\$ 50,930	\$43,990	\$ 94,920	E1
98A-242	\$ 14,145	\$ -0-	\$ 14,145	E2
98A-243	\$ 66,215	\$ -0-	\$ 66,215	E3
98A-244	\$ 245	\$ -0-	\$ 245	E4

* Actual or Fair Market Value

3. That Taxpayer timely protested these determinations of value to the Dawes County Board of Equalization ("County").
4. That the County denied the protests, and determined that 80% of the actual or fair market value of the subject properties as of the assessment date was as follows: (E1, E2, E3, E4).

Case No.	Land at 80% of FMV*	FMV* of Improvements	Totals	Ex. No.
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* Actual or Fair Market Value

5. That Taxpayer timely filed appeals of those decisions to the Commission.

6. That Taxpayer testified that she had no evidence or opinion of actual or fair market value of the subject properties.
7. That at the close of the Taxpayer's case, the County moved to dismiss the case for failure to overcome the statutory presumption in favor of the County which is set forth in Neb. Rev. Stat. §77-1511 (Reissue 1996).
8. That Taxpayer adduced no credible evidence upon which the Commission could conclude that the decisions of the County were unreasonable or arbitrary.

CONCLUSIONS OF LAW

1. 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.
2. 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." *Kawasaki Motors v. Lancaster Cty. Bd. Of Equal.*, 7 Neb. App. 655 (1998).

3. That since no evidence has been adduced to show that the decision of the County was unreasonable or arbitrary, the Taxpayer has failed to overcome the presumption afforded the County in Neb. Rev. Stat. §77-1511 (Reissue 1996).
4. That pursuant to *Bottorf v. Clay County Board of Equalization*, 7 Neb. App. 162 (1998). "Based upon the applicable law, the Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary." Given this mandate, the Commission must grant the County's Motion to Dismiss as a matter of law.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. That these appeals are dismissed with prejudice.
2. That therefore Taxpayer's agricultural real property, legally described as E½E½ of Section 9, Township 31, Range 51, consisting of approximately 160 acres in Dawes County, Nebraska, shall be valued for tax year 1998, as determined by the Dawes County Board of Equalization, as follows:

Land	\$50,930
Improvements	\$43,990
Total	\$94,920

3. That therefore Taxpayer's agricultural real property, legally described as N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 16, Township 31, Range 51, consisting of approximately 80 acres in Dawes County, Nebraska, shall be valued for tax year 1998, as determined by the Dawes County Board of Equalization, as follows:

Land	\$14,145
Improvements	\$ -0-
Total	\$14,145

4. That therefore Taxpayer's agricultural real property, legally described as W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 10, Township 31, Range 51, consisting of approximately 160 acres in Dawes County, Nebraska, shall be valued for tax year 1998, as determined by the Dawes County Board of Equalization, as follows:

Land	\$66,215
Improvements	\$ -0-
Total	\$66,215

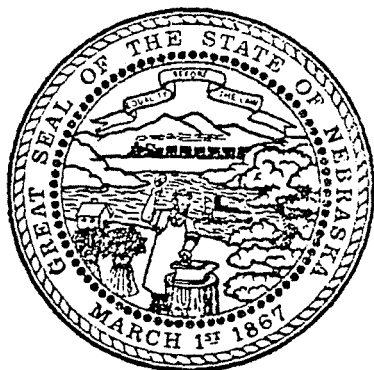
5. That therefore Taxpayer's agricultural real property, legally described as PT. NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, Township 31, Range 51, consisting of approximately .5 acres in Dawes County, Nebraska, shall be valued for tax year 1998, as determined by the Dawes County Board of Equalization, as follows:

Land	\$245
Improvements	\$ -0-
Total	\$245

6. That these decisions, if no appeal is filed, shall be certified to the Dawes County Treasurer, and the Dawes County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
7. That these decisions shall only be applicable to tax year 1998.
8. That each party is to bear its own costs in this matter.

IT IS SO ORDERED.

Dated this 17th day of December, 1999.



SEAL

Mark P. Reynolds, Chairman

Janet L. Edwards
Janet L. Edwards, Commissioner

Robert L. Hans
Robert L. Hans, Commissioner