

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

JAMES W. PHELPS,

Appellant,

vs.

DAWES COUNTY BOARD OF
EQUALIZATION,

Appellee.

CASE NO. 98A-264

**FINDINGS AND ORDER
ADOPTING RECOMMENDATIONS
OF SPECIAL MASTER
(DECISION OF COUNTY AFFIRMED)**

The Special Master for the Nebraska Tax Equalization and Review Commission called the above-captioned case for a hearing on the merits of the appeal in the City of Gering, Scotts Bluff County, Nebraska, on the 21st day of October, 1999, pursuant to a Notice of Hearing issued the 14th day of September, 1999.

James W. Phelps ("Taxpayer") appeared personally at the hearing, and the Dawes County Board of Equalization appeared through the special counsel. During the hearing, the Special Master 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 considering the exhibits and the recommendations of the Special Master, adopts the following Findings of Fact, Conclusions of Law, and Final Order in this case:

FINDINGS OF FACT

A. PROCEDURAL FINDINGS

1. That Taxpayer is the owner of record of certain agricultural real property located in Dawes County, Nebraska ("subject property").
2. That the Dawes County Assessor ("Assessor") proposed valuing the subject property in the amount of \$6,855 for purposes of taxation as of January 1, 1998 ("assessment date").
3. That Taxpayer timely filed a protest of the proposed valuation, and requested that the subject property be valued in the amount of \$3,435. (E2).
4. That the basis of the protest was the allegation that the land is over valued in accordance with UNL's average reported value of Nebraska farmland for different types of land by cropping district. (E2).
5. That the County denied the protest. (E2).
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 Exhibit 8 is an appraisal. Four of the five sales used in the Sales Comparison Approach are in Sioux County. Little consideration was given for this reason.
2. That Taxpayer could not explain how UNL's average reported value was determined.
3. That the Assessor is required by law to obey all rules and regulations, the instructions and orders, and the manuals of assessment of the Property Tax Administrator.

4. That the County is required to use professionally accepted mass appraisal methods.
5. That insufficient evidence was adduced by Taxpayer to support his opinion of the actual or fair market value of the subject property.
6. That from the record before it, the Commission finds and determines that the actual or fair market value of the subject property as of January 1, 1998, was \$6,855.
7. That the decision of the County was neither unreasonable nor arbitrary.
8. That therefore the decision of the County must be affirmed.

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 "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).

4. That based on the record before the Commission, insufficient evidence has been adduced to establish that the action of the County in this case was unreasonable or arbitrary.
5. 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).
6. That as a matter of law the Taxpayer has NOT met the burden of persuasion as required by *Kawasaki Motors v. Lancaster Cty. Bd. Of Equal.*, 7 Neb. App. 655 (1998).
7. That based on the record before the Commission, the Commission must, and hereby does, conclude as a matter of law that the decision of the Dawes County Board of Equalization which set the assessed value of the subject property for tax year 1998 was neither unreasonable nor arbitrary.
8. That therefore the decision of the Dawes County Board of Equalization must be affirmed.

ORDER

1. That the order of the Dawes County Board of Equalization setting the assessed value of the subject property for tax year 1998 is affirmed.
2. That Taxpayer's agricultural real property legally described as All of SE/4 SW/4 West of RR 18-30-51 in Dawes County, Nebraska, shall be valued as follows for tax year 1998:

Land	\$6,855
Improvements	\$ 0
Total	\$6,855

3. That this decision, 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).

4. That this decision shall only be applicable to tax year 1998.
5. That each party is to bear its own costs in this matter.

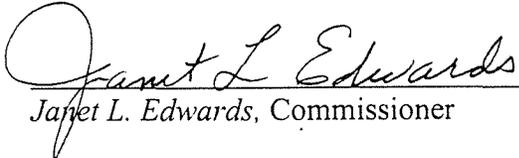
IT IS SO ORDERED.

Signed and sealed this 1st day of November, 1999.

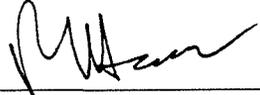




Mark P. Reynolds, Chairman



Janet L. Edwards, Commissioner



Robert L. Hans, Commissioner