

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

FREDEN M. BIRDSALL (PRICE),	)	
	)	
Appellant,	)	Case No. 98A-282. Case No. 98A-283
	)	Case No. 98A-284
vs.	)	
	)	
DAWES COUNTY BOARD OF EQUALIZATION,	)	FINDINGS AND ORDERS
	)	AFFIRMING DECISION OF
	)	COUNTY
Appellee.	)	
	)	

Filed: December 17, 1999

Appearances:

For the Appellant:           Glen E. Price Jr.  
                                  Freden M. Birdsall (Price)  
                                  31 King Canyon Road  
                                  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 affirms the decisions of the Dawes County Board of Equalization which denied Taxpayer's protests, and denies Taxpayer's request for a reduction in the assessed values of the subject properties.

## 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 16<sup>th</sup> day of September, 1999, pursuant to a Notice of Hearing issued the 22<sup>nd</sup> day of July, 1999.

Freden M. Birdsall (Price) ("Taxpayer") appeared personally and with her husband Glen Price, Jr. at the hearing, and the Dawes County Board of Equalization 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-282, 98A-283 and 98A-284; 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 Profiles; *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); *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 Tabs Numbered 1, 3, 4, 8, 11, 12, and 13 of Exhibit No. 4.

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## FINDINGS OF FACT

From the record, the Commission finds and determines as follows:

### A. PROCEDURAL FINDINGS

1. That Taxpayer is the owner of record of certain agricultural real properties located in Market Area 4 of Dawes County, Nebraska legally described as ("subject properties"):

Case No.	Legal Description	Acres	Ex. No.
98A-282	PT.S½SW¼ of Section 7, Township 32, Range 48	75.06	E6
98A-283	PT. SW¼NW¼, PT.N½SW¼ of Section 7, Township 32, Range 48	108.65	E7
98A-284	PT.SW¼, NW¼ of Section 18, Township 32, Range 48	229.08	E8

2. That the Dawes County Assessor ("Assessor") proposed valuing the subject properties for the purposes of taxation at 80% of fair market value (FMV) as of January 1, 1998 ("assessment date") in the amounts set out below:

Case No.	Land at 80% of FMV*	FMV* of Improvements	Totals	Ex. No.
98A-282	\$ 31,135	\$ -0-	\$ 31,135	E1
98A-283	\$ 21,175	\$ -0-	\$ 21,175	E2
98A-284	\$ 79,410	\$14,505	\$ 93,915	E3

\* Actual or Fair Market Value:

3. That Neb. Rev. Stat. §77-201(2) requires agricultural land and horticultural land to be valued at 80% of fair market value.

4. That Taxpayer timely filed protests of the proposed valuations, and requested that the subject properties be assessed at 80% of fair market value as set forth in the chart below, and that the value of the improvements was not at issue:

Case No.	Land at 80% of FMV*	FMV* of Improvements	Totals	Ex. No.
98A-282	\$16,070	\$ -0-	\$16,070	E1
98A-283	\$10,220	\$ -0-	\$10,220	E2
98A-384	\$41,725	\$14,505	\$56,230	E8:2

\* Actual or Fair Market Value

5. That the basis of the protests were that "Although this is a contiguous parcel and is utilized as one unit, it was divided for tax valuation purposes into Area '1' and Area '4'. I am requesting that it be classified in Area '1' in its entirety. It is illogical to say that the SAME SOIL CLASSIFICATIONS on one section of the property are valued at a higher rate than another section, when the sections are contiguous." (Case File).
6. That the County denied the protests. (E1)
7. That thereafter, the Taxpayer timely filed appeals of the County's decisions to the Commission. (Appeal Forms).

**B.**

**SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS**

1. That Taxpayer testified that his opinion of actual or fair market value of the subject property was \$300 an acre as of the assessment date.
2. That the subject property is located 5.2 miles from the City of Chadron and is right on Highway 385, with 1 mile of Highway frontage.

3. That there is a windmill with a livestock well and an new well registered but not in use on the parcels in Section 7, and that the parcel in section 18 has two wells for the house and a creek, Chadron Creek, running through it.
4. That Taxpayer testified that the subject properties contain an easement for a high pressure gas line, and a water pipeline that run through both properties and that the City of Chadron has an easement for tiling located along the creek on the property. That Taxpayer produced no evidence other than oral testimony as to the location or duration of these easements.
5. That the subject properties are next to the Nebraska National Forest and that there is a mud forest service road along the East edge of the subject properties.
6. That Taxpayer testified that their house received no valuation increase that the land took the burden. That the property in Case No. 98A-284 has improvements and that the value of the improvements is not an issue in this case.
7. That the Taxpayer objected to the use of Market Areas in Dawes County. That Taxpayer alleged that the subject properties are more comparable to land in Market Area 1 of Dawes County, Nebraska and should be included in that Market Area rather than Market Area 4 where the subject property is located..
8. That the use of market areas is a professionally accepted mass appraisal practice.  
*Property Assessment Valuation, 2<sup>nd</sup> Ed. p. 85.*
9. That from the entire record before it, the Commission finds and determines that the actual or fair market value of the subject properties as of January 1, 1998, were as set forth below:

Case No.	Land at 80% of FMV*	FMV* of Improvements	Totals
98A-282	\$ 31,135	\$ -0-	\$ 31,135
98A-283	\$ 21,175	\$ -0-	\$ 21,175
98A-284	\$ 79,410	\$14,505	\$ 93,915

\* Actual or Fair Market Value.

10. That the County's "Basis for Action Taken" on Taxpayers Forms 422 is: "The Board of Equalization has chosen to keep agricultural [sic] land assessments at their present level, as ordered by T.E.R.C., pending the outcome of the Board's petition." That it is clear from this record that the County failed to consider the merits of Taxpayer's protests (E1, E2, E3). That such action was unreasonable and arbitrary.
11. That from the record before the Commission, Taxpayer adduced no credible evidence of fair market value which would establish that the County's determination of value for the subject properties was unreasonable. That therefore the valuation decisions of the County were not unreasonable.
12. That therefore the decisions of the County must be affirmed.

**CONCLUSIONS OF LAW**

1. That the Commission has jurisdiction over the parties and the subject matter of these appeals.
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 credible evidence has been adduced to establish that the action of the County in this case was unreasonable.
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 decisions of the Dawes County Board of Equalization which set the assessed values of the subject properties for tax year 1998 were not unreasonable.
8. That therefore the decisions of the Dawes County Board of Equalization must be affirmed.



**ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:**

1. That the order of the Dawes County Board of Equalization setting the assessed value of the subject properties for tax year 1998 are affirmed.
2. That Taxpayers' agricultural real property in Case No. 98A-282, legally described as PT.S½SW¼, of Section 7, Township 32, Range 48, consisting of approximately 75.06 acres in Dawes County, Nebraska, shall be valued as follows for tax year 1998:

Land	\$31,135
Improvements	\$ -0-
Total	\$31,135

3. That Taxpayers' agricultural real property in Case No. 98A-283, legally described as PT.SW¼NW¼, PT.N½SW¼, of Section 7, Township 33, Range 48, consisting of approximately 108.65 acres in Dawes County, Nebraska, shall be valued as follows for tax year 1998:

Land	\$21,175
Improvements	\$ -0-
Total	\$21,175

4. That Taxpayers' agricultural real property in Case No. 98A-284, legally described as PT. SW $\frac{1}{4}$ , NW $\frac{1}{4}$ , of Section 18, Township 32, Range 48, consisting of approximately 229.08 acres in Dawes County, Nebraska, shall be valued as follows for tax year 1998:

Land	\$79,410
Improvements	\$14,505
Total	\$93,915

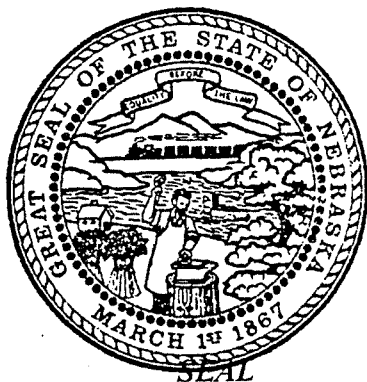
5. That these decisions, if no appeal is filed, shall be certified to the Dawes County Treasurer, and the Dawes County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).

6. That these decisions shall only be applicable to tax year 1998.

7. That each party is to bear its own costs in this matter.

**IT IS SO ORDERED.**

Dated this 17<sup>th</sup> day of December, 1999.



*Mark P. Reynolds*, Chairman

*Janet L. Edwards*, Commissioner

*Robert L. Hans*, Commissioner