

NATURE OF THE CASE

The Leonard T. Gerdes Revocable Trust ("Taxpayer") owns certain agricultural real property located in Nemaha County, Nebraska. Taxpayer filed a protest with the Nemaha County Board of Equalization ("County") alleging that waste land should be assessed at zero as waste land or creeks have no agricultural value. By way of relief, Taxpayer requested that the proposed 1996 valuation of \$59,160.00 be reduced to \$58,650.00 (96R-200) and the proposed 1996 valuation of \$10,085.00 be reduced to \$9,725.00 (96R-201). County denied the protest, from which decision Taxpayer appeals.

DUTIES OF THE PARTIES

A taxpayer who is dissatisfied with the county assessor's determination of assessed value of real property must file a written protest with County. Neb. Rev. Stat. §77-1502 (Reissue 1996).

A county board of equalization must, between June 1 and July 25 of each year, fairly and impartially equalize the values of all items of real property in the county "except agricultural and horticultural land . . ." so that all real property is assessed uniformly and proportionately. Neb. Rev. Stat. §77-1504 (Reissue 1996).

"For purposes of equalization of the valuation of any protested real property, the county board of equalization shall make its adjustment so that the value of the protested property compares to the average level of value of the class or subclass of property in which the protested property is categorized." Neb. Rev. Stat. §77-1504 (Reissue 1996).

ANALYSIS

Taxpayer claims that waste or creeks should be valued at zero because they have no

agricultural value. The subject properties have 17 acres and 12 acres of waste and creek respectively. (96R-200 and 96R-201)

The Commission took judicial notice of the Case files; the Nebraska Agricultural and Horticultural Land Valuation Manual (1996); the Nebraska Assessor's Reference Manual - Volumes 1 and 2 (Reissue 1996); the Nebraska Constitution; Nebraska State Statutes; LB 397: *Property Assessment Valuation, Second Edition*, published by International Association of Assessing Officers; the Property Tax Division of the Department of Revenue Published 1996 Ratios and Measures of Central Tendency as required by Neb. Rev. Stat. § 77-1327(6); the 1996 Agland County Profile for Nemaha County; Title 442 (Tax Equalization and Revenue Commission's Rules and Regulations); and the Uniform Standards of Professional Appraisal Practices. Taxpayer introduced as evidence aerial photos of the farms. County introduced as evidence copies of the property record cards for the subject properties, and a certified copy of the County Board of Equalization Journal. County also indicated that they had no record of any land transfers of waste land or creeks where the land had no value whatsoever.

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 the Commission finds and determines as follows:

1. That the Taxpayer owns two parcels of agricultural real property legally described in the

- petitions and which is located in Nemaha County, Nebraska.
2. That the Taxpayer was dissatisfied with the 1996 valuation the County assessor placed on the subject properties and timely filed a protest with County.
 3. That the County held a hearing and denied Taxpayer's request for a reduction in value for the subject properties.
 4. That from such a decision Taxpayer properly filed an appeal with the Tax Equalization and Review Commission.
 5. That the waste land being valued at \$30.00 per acre was consistent with the valuation of all waste land in Nemaha County.
 6. That no evidence was adduced to show that any waste land was transferred at zero value in Nemaha County.
 7. That no evidence was adduced to show that the Nemaha County Board of Equalization was arbitrary or unreasonable in denying Taxpayer's request for a reduction in the assessed values of the subject properties.

JURISDICTION

Jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (Reissue 1996), as amended by L.B. 397 (1997 Session).

STANDARD OF REVIEW ANALYSIS

The Tax Equalization and Review Commission is not a court. The Commission was created pursuant to state law to provide for an accessible and affordable system of review of valuation decisions. Under such circumstances, applying the standard devised by the Nebraska Supreme Court to the Commission would be presumptuous and ill-advised.

Therefore, the Commission must adopt a standard applicable to cases it hears and decides. This standard must be in keeping with the precept that tax laws are to be strictly construed, and construed in the light most favorable to the taxpayer. See, e.g., *Nebraska Annual Conference of the United Methodist Church v. Scotts Bluff County Board of Equalization*, 243 Neb. 412, 416, 499 N.W.2d. 543, 547 (1993), and *Sioux City and Pacific R.R. v. Washington County*, 3 Neb. 30, 32 (1873). In determining that standard, resort must be made to the language of the statute. The Nebraska Supreme Court has often held that statutory construction is a simple task. The Court has held "In construing a statute, it is presumed that the Legislature intended a sensible rather than an absurd result. . . Statutory language is to be given its plain and ordinary meaning. . ." *Metropolitan Utilities Dist. v. Twin Platte Natural Resources Dist.*, 250 Neb. 442, 451, 550 N.W.2d 907, 913 (1996).

An administrative decision is "arbitrary" when it is made in disregard of the facts or circumstances and without some basis which would lead a reasonable person to the same conclusion. *Ponderosa Ridge LLC v. Banner County*, 250 Neb. 944, 554 N.W. 2d 151 (1966); *Central Platte NRD v. City of Fremont*, 250 Neb. 252, 549 N.W. 2d 112 (1996).

CONCLUSIONS OF LAW

The Commission must, for the reasons set forth above, and pursuant to Neb. Rev. Stat. §77-1510 (Reissue 1996), hereby does conclude as a matter of law that the action of the Nemaha County Board of Equalization should be affirmed.

ORDER

IT IS THEREFORE ORDERED as follows:

1. That the decision of the Nemaha County Board of Equalization which denied Taxpayers' protest is affirmed.

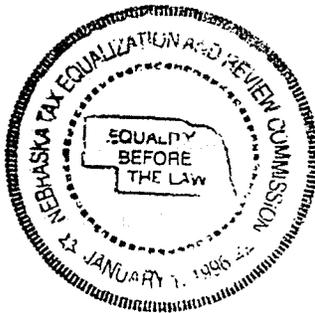
2. That Taxpayer's agricultural real property known as W 1/2 SE Sec 9-4-13, and NW 1/4 NE 1/4 Nemaha County, Nebraska, more commonly known as Leonard's farm, shall be valued as follows for tax year 1996:

	Case No. 96R-200	Case No. 96R-201
Land	\$59,160.00	\$10,085.00
Improvements	\$ 0	\$ 0
Totals	\$59,160.00	\$10,085.00

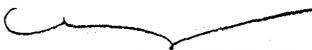
3. That this decision, if no appeal is filed, shall be certified within thirty days to the Nemaha County Treasurer, and the Nemaha County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
4. That each party is to bear its own costs in this matter

IT IS SO ORDERED.

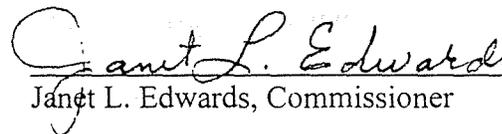
Dated this 6th day of August, 1997.



Seal



Mark P. Reynolds, Chairman



Janet L. Edwards, Commissioner



Robert L. Hans, Commissioner