

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

HALFERTY FAMILY TRUST,)
)
 Appellant,)
)
 vs.)
)
 CHERRY COUNTY BOARD OF)
 EQUALIZATION,)
)
 Appellee.)
)

CASE NO. 98A-62

**DOCKET ENTRY
AFFIRMING DECISION
OF COUNTY**

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 Ainsworth, Brown County, Nebraska, on the 2nd day of June, 1999, pursuant to a Notice of Hearing issued the 23rd day of February, 1999.

Halferty Family Trust ("Taxpayer") appeared at the hearing through its Trustee, and the Cherry County Board of Equalization appeared through a member of the Cherry 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, entered its Findings of Fact, Conclusions of Law, and a Final Order on the merits of the appeal in this case, which were in substance as follows:

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 real property located in Cherry County, Nebraska ("subject property").
2. That the Cherry County Assessor ("Assessor") proposed valuing the subject property for purposes of taxation as of January 1, 1998 ("assessment date") in the amount of \$3,532. (E3).
3. That Taxpayer timely filed a protest of the proposed valuation, and requested that the subject property be valued in the amount of \$3,532. (E3).
4. That the basis of the protest was the allegation that the property was improperly classified and overvalued. (E3).
5. That the County denied the protest. (E3).
6. That thereafter, the Taxpayer timely filed an appeal of the County's decision to the Commission. (Appeal Form).
7. That three appeals of contiguous land owned by the Taxpayer were consolidated for purposes of hearing. (Case Numbers 98A-60; 98A-61; 98A-62).

B.
SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. That the Taxpayer acquired the 2 ten acre tracts of land on a land contract in 1980 for \$60,000. That the Taxpayer acquired the three acre tract a year or two later for \$1,800.
2. That the Taxpayer has invested \$10,000 to \$15,000 in improvements to the subject property since it acquired the subject property.
3. That the Taxpayer, from the record before the Commission, sold \$7,758.30 worth of agricultural products between 1994 and 1998. That the Taxpayer is retired from the military and from ranching. That the Assessor determined that the subject property was rural residential property as of the assessment date. That the Commission finds and determines that primary use of the subject properties is not agricultural use, but rural residential use.
4. 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 \$3,532.
5. That the decision of the County was neither unreasonable nor arbitrary.
6. 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 "the Legislature may provide that agricultural land and horticultural land, as defined by the Legislature, shall constitute a separate and distinct class of property for purposes of taxation and may provide for a different method of taxing agricultural land and horticultural land which results in values that are not uniform and proportionate with all other real property and franchises but which results in values that are uniform and proportionate upon all property within the class of agricultural land and horticultural land." Neb. Const. Art. VIII, §1, Paragraph 4.
5. That "Actual value of real property for purposes of taxation shall mean the market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1)

sales comparison approach, taking into account factors such as location, zoning, and current functional use, (2) income approach, and (3) cost approach.” Neb. Rev. Stat. §77-112 (1998 Cum. Supp.).

6. That “(1) Agricultural land and horticultural land shall mean land which is primarily used for the production of agricultural or horticultural products, including wasteland lying in or adjacent to and in common ownership or management with land used for the production of agricultural or horticultural products. Land retained or protected for future agricultural or horticultural uses under a conservation easement as provided in the Conservation and Preservation Easements Act shall be defined as agricultural land or horticultural land. Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land. Land that is zoned predominantly for purposes other than agricultural or horticultural use shall not be assessed as agricultural land or horticultural land; and (2) Agricultural or horticultural products shall include grain and feed crops; forages and sod crops; animal production, including breeding, feeding, or grazing of cattle, horses, swine, sheep, goats, bees, or poultry; and fruits, vegetables, flowers, seeds, grasses, trees, and other horticultural crops. Neb. Rev. Stat. §77-1359 (1998 Cum. Supp.).

7. That the Nebraska Supreme Court has determined that “(w)here the county assessor does not act upon his own information, or does not make a personal inspection of the property, any presumption as to the validity of the official assessment does not obtain.” *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 580, 144 N.W.

2d 161, 169 (1966).

8. 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).
9. That based on the record before the Commission, insufficient evidence has been adduced to establish that the value of the subject properties as determined by the County was unreasonable or arbitrary.
10. 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).
11. 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 Cherry County Board of Equalization which set the assessed value of the subject properties for tax year 1998 was neither unreasonable nor arbitrary.
12. That therefore the decision of the Cherry County Board of Equalization must be affirmed.

ORDER

1. That the order of the Cherry County Board of Equalization setting the assessed value of the subject properties for tax year 1998 is affirmed.
2. That Taxpayer's rural residential real property, legally described as the N 200' of NW 1/4 NW 1/4 SW 1/4, Section 1, Township 33 North, Range 28 W, in Cherry County, Nebraska, shall be valued as follows for tax year 1998:

Land	\$ 3,532
Improvements	\$ -0-
Total	\$ 3,532

3. That this decision, if no appeal is filed, shall be certified to the Cherry County Treasurer, and the Cherry 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.

The above and foregoing Findings of Fact, Conclusions of Law, and Order were approved by a quorum of the Commission, and entered of record on the 2nd day of June, 1999, and are therefore deemed to be the Order of Commission in this case, pursuant to Neb. Rev. Stat. §77-5005. (Reissue 1996).

Signed and sealed this 7th day of June, 1999.

SEAL





Mark P. Reynolds, Chairman