

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

BENTLEY-MILLER,)
)
Appellant,)
)
vs.)
)
BOX BUTTE COUNTY BOARD OF)
EQUALIZATION.)
)
Appellee.)
)

CASE NO. 98C-74

FINDINGS AND ORDERS

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, based on the stipulation offered by the Parties finds and determines as follows:

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) (1998 Cum. Supp.). The Commission may, however, evaluate the evidence presented utilizing its experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016 (5) (1998 Cum. Supp.).

From the pleadings and the evidence contained in the record before it, the Commission finds and determines as follows:

FINDINGS OF FACT

1. That Taxpayer is the owner of record of certain commercial real property located in Box Butte County, Nebraska ("subject property").

2. That the Box Butte County Assessor ("Assessor") proposed valuing the subject property for purposes of taxation as of January 1, 1998 ("assessment date") as follows:

Land	\$ 51,500
Improvements	\$215,955
Total	\$267,455

3. That Taxpayer timely filed a protest of the proposed valuation, and requested that the subject property be valued as follows:

Land	\$ 51,500
Improvements	\$192,575
Total	\$244,075.

4. That the County denied the protest, and determined that the assessed value of the subject property as of the assessment date was as follows:

Land	\$ 51,500
Improvements	\$215,955
Total	\$267,455.

5. That thereafter, the Taxpayer timely filed an appeal of the County's decision to the Commission. (Appeal Form)

6. That the parties entered into a Stipulation and agreed to value the subject property as follows:

Land	\$ 51,000
Improvements	\$210,955
Total	\$261,955

7. That therefore the decision of the County must be reversed.

JURISDICTION

Jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (1998 Cum. Supp.).

CONCLUSIONS OF LAW

1. That the Commission has jurisdiction over both 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 the board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its actions. That the 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 fac 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 as a matter of law the Taxpayer has met the burden of persuasion as required by *Kawasaki Motors v. Lancaster Cty. Bd. of Equal.*, 7 Neb. App. 655 (1998).
5. 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 Box Butte County Board of Equalization which set the assessed value of the subject property for the purposes of taxation at \$267,455 for tax year 1998 was both unreasonable and arbitrary.
6. That therefore the decision of the Box Butte County Board of Equalization must be vacated and reversed.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That the decision of the Box Butte County Board of Equalization which denied Taxpayers' protest is vacated and reversed.
2. That Taxpayer's commercial real property known as Tract 3 (Samuelson) lands of C.T.S.R.G. (Cox, Tasso, Samuelson, Ross and Gaines), Box Butte County, Nebraska, more commonly known as 1234 West 3rd, Alliance, Box Butte County, Nebraska, shall be valued as follows for tax year 1998:

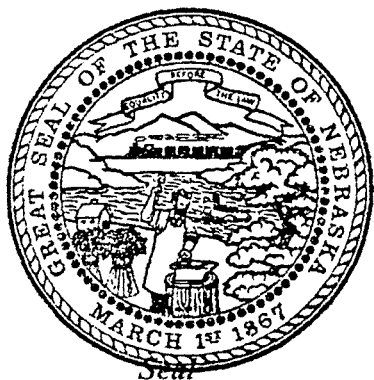
Land \$ 51,000


Improvements	\$210,955
Total	\$261,955

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

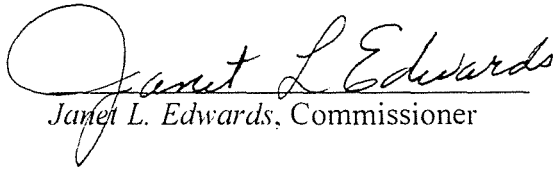
IT IS SO ORDERED.

Dated this 16 day of September, 1999.

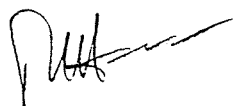




Mark P. Reynolds, Chairman



Janet L. Edwards, Commissioner



Robert L. Hans, Commissioner