

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

JERRY STERLING, CINDY STERLING,)
and RONALD ASCHWEGE,)

Appellants,)

vs.)

DAWES COUNTY BOARD OF)
EQUALIZATION,)

Appellee.)

CASE NO. 98A-139

ORDER DISMISSING APPEAL
FOR FAILURE TO APPEAR

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 16th day of September, 1999, pursuant to a Notice of Hearing issued the 22nd day of July, 1999.

Jerry Sterling, Cindy Sterling, and Ronald Aschwege ("Taxpayers") failed to appear at the hearing. The Dawes County Board of Equalization ("County") appeared through Special Appointed Counsel, Dennis D. King. During the hearing, the Commission took judicial notice of certain information. Each of the parties was afforded the opportunity to present evidence and argument. The Commission also received all evidence which had been provided by the parties in accordance with the provisions of the Notice of Hearing.

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, in compliance with that mandate, adopts the following as its final decision and order in this case:

FINDINGS OF FACT

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

1. That Taxpayers are the owners of record of certain agricultural real property as legally described in the petition ("subject property").
2. That the County Assessor proposed valuing the subject property for purposes of taxation for tax year 1998 in the amount of \$58,480. (E2:1).
3. That Taxpayers timely protested that determination of value to the Dawes County Board of Equalization ("County") and requested that the assessed value be set in the amount of \$42,645. (E1). That the protest form as completed by the Taxpayer incorrectly indicates that the proposed value as determined by the Assessor was \$62,480. (E1).
4. That the County denied the protest. (E1).
5. That Taxpayers timely filed an appeal of that decision to the Commission.
6. That County was served with a Notice in Lieu of Summons, and duly answered that Summons.
7. That an Order for Hearing was issued in this case on the 22nd day of July, 1999.
8. That an Affidavit of Service which appears in the records of the Commission establishes that a copy of the Order for Hearing was served on all parties.
9. That the Order for Hearing required the parties to exchange copies of all documentary, photographic, or other evidence on the opposing party, and to serve a copy of those exhibits on the Commission.

10. That the Taxpayers did not serve copies of any exhibits on the County or on the Commission.
11. That a Notice of Hearing was issued in this case on the 22nd day of July, 1999.
12. That an Affidavit of Service which appears in the records of the Commission establishes that a copy of the Notice of Hearing was served on all parties.
13. That Chapter 4, Title 442, Section 012.01A1 requires that, if the Taxpayer is a natural person, that person must appear at the hearing.
14. That the Notice of Hearing (Paragraph 3) states that if the Taxpayers fails to appear at the hearing the Commission will enter an order dismissing the case.
15. That the Commission called the above-captioned case for hearing on the merits in the City of Chadron, Dawes County, Nebraska, on the 16th day of September, 1999.
16. That no one appeared on behalf of the Taxpayers at the hearing.
17. That County appeared at the hearing through counsel, with its witnesses, and was prepared to defend the decision of the Dawes County Board of Equalization.
18. That each of the parties was afforded an opportunity to present evidence and argument as required by Neb. Rev. Stat. §77-5015 (Reissue 1996).
19. That each of the parties was afforded an opportunity to cross-examine the witnesses as required by Neb. Rev. Stat. §77-5016(4) (1998 Cum. Supp.).
20. That from the record before the Commission, the Taxpayers have failed, neglected and refused to comply with the Order for Hearing and with substantive provisions of Title 442 and the Notice of Hearing.

CONCLUSIONS OF LAW

That the Commission must, and hereby does conclude as a matter of law that in light of Taxpayers' failure to appear in violation of Title 442, Nebraska Administrative Code, and for want of prosecution, that this appeal should be dismissed.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That this appeal is ordered dismissed with prejudice.
2. That Taxpayers' agricultural real property legally described as the SE ¼, Section 1, Township 31, Range 52, Dawes County, Nebraska, shall be valued as follows for tax year 1998, as determined by the Dawes County Board of Equalization:

Land	\$44,265
Improvements	\$14,215
Total	\$58,480

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

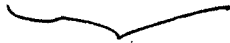
5. That this decision shall only be applicable to tax year 1998.

IT IS SO ORDERED.

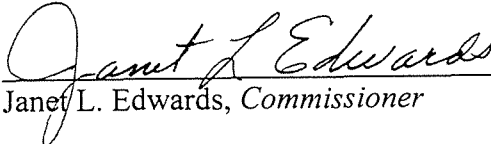
Dated this 5th day of November, 1999.



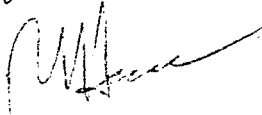
Seal



Mark P. Reynolds, *Chairman*



Janet L. Edwards, *Commissioner*



Robert L. Hans, *Commissioner*