

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

LOU KROENKE FARM INC.,)
)
)
Appellant,)
)
v.)
)
DODGE COUNTY BOARD)
OF EQUALIZATION,)
)
Appellee.)

CASE NO. 97R-103

- DOCKET ENTRY
REVERSING DECISION
OF APPELLEE

The Nebraska Tax Equalization and Review Commission ("Commission") called the above-captioned case for hearing on the merits in the City of Fremont, Dodge County, Nebraska, on the 15th day of June, 1998, pursuant to a Notice of Hearing issued the 31st day of March, 1998.

Appellant appeared personally. Appellee appeared through. 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 (1997 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 found and determined as follows:

- I. That Appellant is the owner of record of certain agricultural real property as described in the petition in this case.
- II. That Appellant timely filed a protest of the assessed value of its property for tax year 1997.
- III. That the basis for the protest was the allegation that nothing has been done to the inside of the house for forty years. The siding and shingles have been done on the outside..
- IV. That the County Assessor proposed valuing the property at \$63,750 for the purposes of taxation.
- V. That the Appellant requested that the property be valued at \$58,875 for purposes of taxation.
- VI. That the Appellee denied the protest and raised the value of the improvements.
- VII. That Appellant thereafter timely filed an appeal of that decision to the Commission.
- VIII. That the Assessor's Marshall and Swift Cost Worksheet indicated the value of the house at \$11,340, and he testified that was its' January 1997 value.
- IX. That the Assessors miscellaneous structures worksheet indicates a value of the buildings at \$17,477, and the Assessor testified that was not the value on January 1, 1997, and he did not know how the office arrived at the \$11,200, that was apparently used (It should be noted that the County changed Assessors in April, 1997).
- X. That the Form 422 indicated that the Assessors recommendations to the County Board of Equalization was "No change".

- XI. That neither the Appellant nor the Appellee was aware of any evidence presented to the County Board of Equalization, that is not contained on the property record card and supporting worksheet.
- XII. That property record card and supporting worksheets are devoid of any evidence that would alter the Assessors opinion of value and his recommendation.
- XIII. That from the record before the Commission the Appellant has established by a preponderance of the evidence that the decision of the Appellee was unreasonable and arbitrary.
- XIV. That therefore the assessed value of the subject property as determined by the Appellee for tax year 1997 is not supported by the evidence.

CONCLUSIONS OF LAW

- I. That the Commission has jurisdiction over the parties and the subject matter of this appeal.
- II. That the Commission is required by Neb. Rev. Stat. §77-1511 (Reissue 1996) to affirm the decision of the Appellee unless evidence is adduced establishing that the action of the Appellee was unreasonable or arbitrary.
- III. That as a matter of law the Appellant has established by a preponderance of the evidence that the action of the Appellee was unreasonable and arbitrary.

- IV. That the Commission, in cases heard under Neb. Rev. Stat. §77-1511 (Reissue 1996) is changed with hearing appeals "as in equity...". Equity requires a "complete adjudication of all matters properly presented...," and will "grant such relief, legal and equitable, as may be required." *State v. Moore*, 234 Neb. 535 (1997).
- V. That furthermore, "Equity is reluctant to permit a wrong to be suffered without a remedy,..." and equity will "devise a remedy...". And finally, where relief may be granted, although no precedent may be found..."
- VI. That the valuation made and returned by the County Assessors is presumed to be correct. *Woods v. Lincoln Gas and Electric Company*, 74 Neb. 526, 527 (1905); *Brown v. Douglas County*, 98 Neb. 299, 303 (1915); *Gamboni v. County of Otoe*, 159 Neb. 417, 431, 67 N. W. 2d 489, 499 (1954); *Ahern v. Board of Equalization*, 160 Neb. 709, 711, 71 N. W. 2nd 307, 309 (1955).
- VII. That the Commission in this case, as a matter of law, must conclude from the record before it that the decision of the Dodge County Board of Equalization to raise the assessed value of the improvements to the subject property, contrary to the recommendation of the County Assessor, and, from the record before the Commission, without evidence to support that decision, was unreasonable and arbitrary.
- VIII. 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 Dodge County Board of Equalization which set the assessed value of the subject property for purposes of taxation at \$71,750 for tax year 1997 was both unreasonable and arbitrary.

IX. That therefore the decision of the Dodge County Board of Equalization must be vacated and reversed.

ORDER

I. That the order of the Dodge County Board of Equalization setting the assessed value of the subject property for tax year 1997 at \$71,750 is vacated and reversed.

II. That Appellants' real property legally described as NW 1/4 SW 1/4, 40A, Section 1, Township 19, Range 5, Dodge County, Nebraska, shall be valued as follows for tax year 1997:

Land	\$41,210
Improvements	\$22,540
Total	\$63,750

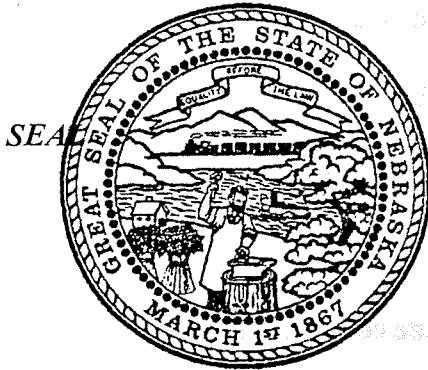
III. That this decision, if no appeal is filed, shall be certified within thirty days to the Dodge County Treasurer, and the Dodge County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).

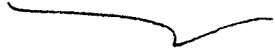
IV. That this decision shall only be applicable to tax year 1997.

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

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 15th day of June, 1998, 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 29th day of June, 1998.





Mark P. Reynolds, Chairman