

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

KERFORD LIMESTONE CO.,)	
)	
Appellant,)	CASE NO. 98A-25
)	
vs.)	
)	FINDINGS AND ORDERS
CASS COUNTY BOARD OF EQUALIZATION,)	
)	
Appellee.)	
)	

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 Lincoln, Lancaster County, Nebraska, on the 20th day of January, 1999, pursuant to a Notice of Hearing issued the 8th day of December, 1998.

Taxpayer appeared with counsel at the hearing, and the County appeared through the Cass County Attorney. 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, found and determined as follows:

FINDINGS OF FACT

A. PROCEDURAL FINDINGS

1. That Taxpayer is the owner of record of certain mineral interests in real property as legally described in the Appeal Form ("subject property").
2. That the Cass County Assessor ("Assessor") proposed valuing the mineral interests in the subject property for purposes of taxation in the amount of \$13,200 as of January 1, 1998 ("assessment date").
3. That Taxpayer timely filed a protest of the proposed valuation, and requested that the subject property be valued at zero.
4. That the basis of the protest was the allegation that "The mineral interests in this land are not to be valued separately valued because the fee and mineral interests have not been severed. They should be calculated as part of the total market value of the land. Further, all taxpayers in Cass County have not been treated uniformly. Many with minerals under their land did not receive a separate valuation."
5. That the County denied the protest.
6. That thereafter, the Taxpayer timely filed an appeal of the County's decision to the Commission.
7. That at the close of the Appellant's case the County moved to dismiss the appeal.

B.
SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. That the mineral interests at issue have never before been assessed by the Cass County Assessor.
2. That the Assessor instigated the assessment of mineral interests based on sales studies which indicated that properties were being acquired for a use other than agricultural use.
3. That the owners of the severed mineral interests had not been recording the deeds or leases regarding those mineral interests with the Register of Deeds.
4. That the County retained the services of an expert, a licensed Certified General appraiser, to assist the Assessor in the valuation of the mineral interests.
5. That the assignment, as testified to by the Appraiser at the hearing before the Commission, was to "Appraise all mineral interests of value."
6. That the owner of the subject property had not filed a request pursuant to Neb. Rev. Stat. §57-236 (1998 Reissue) to separately list the "severed mineral interest" on the tax rolls.
7. That in some of the consolidated appeals the mineral interests in the subject property had not been severed from the surface estate.
8. That the County has not compelled the owners of the severed mineral interests in the consolidated cases to produce the deeds or leases controlling the mineral interests as allowed under the provisions of Neb. Rev. Stat. §77-1502.01 (Reissue 1996).
9. That the mineral interests have some value as demonstrated by the sale and purchase of mineral interests reported to the Appraiser for the County, which are documented in Exhibit 75.

10. That mineral interests are real property. Neb. Rev. Stat. §77-103(5) (Reissue 1996).
11. That the Assessor is required by law to assess all real property as of the assessment date. Neb. Rev. Stat. §77-201 (Reissue 1996); Neb. Rev. Stat. §77-1301(1) (Reissue 1996); and Neb. Rev. Stat. §77-1311 (Reissue 1996).
12. That if the Assessor fails to comply with state law, he or she is subject to removal from office. Neb. Rev. Stat. §77-378 (Reissue 1996).
13. That when appraising real estate, the Assessor must ordinarily only consider two separate entities: "land, which is the nonwasting portion of the real estate; and improvements, which are the wasting portion subject to various forms of depreciation." *Property Assessment Valuation*, 2nd Ed., p. 69. That, however, "The moment a mineral lease is signed by the surface and mineral owner or owners, possible increases or decreases in land value must be considered: decreases from the perspective of long-term surface disruption potential, increases because of potential mineral income from the land." *The Appraisal Journal*, April, 1998, p. 207.
14. That the Assessor, in the valuation of improvements to real property, may utilize any of three different professionally accepted mass appraisal methods. That in the valuation of land the Assessor may utilize any of six different professionally accepted mass appraisal methods. That in the valuation of mineral interests the Assessor may utilize either of two different professionally accepted mass appraisal methods. That therefore the various components of real property may be valued separately under professionally accepted mass appraisal practices. *Property Assessment Valuation*, pp. 42 and 69.

15. That as noted by Appellant, the *tax* on real property is single, indivisible tax for purposes of the foreclosure on real property for failure to pay that tax. *See, e. g. Phelps Co. v. Anderson*, 2 Neb. App. 236, 508 N. W. 2d 314 (1993).
16. That although the tax is a single and indivisible tax, the components of the real estate may be assessed separately. *Phelps, supra*.
17. That the Assessor is required by law to utilize professionally accepted mass appraisal practices in the assessment of real property. Neb. Rev. Stat. §77-112 (Reissue 1996).
18. That there is no requirement that *assessments* be reported as a single value. That "In the evaluation of real property for tax purposes, where buildings and improvements are taxable as part of the real estate, the critical issue is the actual value of the entire property, not the proportion of that value which is allocated to the land or to the buildings and improvements by the appraiser." *Bumgarner v. Valley County*, 208 Neb. 361, 366, 303 N. W. 2d 307, 310 (1981).
19. That to require the County to report the assessed components of the real estate on a single form, as opposed to the two forms currently used, would elevate form over substance.
20. That from the record before the Commission there is no evidence that the value of the land, improvements, and mineral interests of the subject property as determined by the County, taken as a whole, exceeds market value.
21. That no evidence has been adduced to establish that the valuation of mineral interests within Cass County for tax year 1998 was the result of a "... deliberate and intentional discrimination systematically applied. . ." *See, e. g., Kearney Convention Center v. Buffalo Cty. Bd. Of Equal.*, 216 Neb. 292, 344 N. W. 2d 620 (1984).

22. That in fact the Appraiser, conducted interviews with a number of property owners in order to determine the number and extent of properties whose values were affected by mineral interests. (E75). That the Appraiser originally considered the value of the mineral interests of 84 parcels of property as provided by the Assessor. That the Appraiser determined that the actual or fair market value of approximately 102 parcels might be affected by mineral deposits. That he later determined that 62 of these parcels he had identified had mineral interests with no value. (E75).
23. That the Appraiser supported his opinion of value for the mineral interests at issue using 2 professionally accepted mass appraisal approaches to value. That he placed the greatest weight on the Income Approach, which was supported by the Sales Comparison Approach.
24. That the Geologist's Exhibits show there are limestone and sand and gravel deposits beneath much of Cass County. That these Exhibits show "outcroppings" in bright red. That the Taxpayer has the westernmost "active" mine in Section 29 and 32. That all of the outcroppings west of the Taxpayer's property is broken up and not as concentrated. That the Geologist did not know if there was, or was not, some obstruction that would preclude economically feasible mining in that area.
25. That the Geologist testified that he has no opinion of value of the mineral interests at issue, as this was not his area of expertise. He did not know if it would be "economically feasible" or "commercially viable" to mine the limestone in the areas surrounding Weeping Water which are not currently being mined.

26. That from the record before the Commission, the market value of the mineral interests in the subject property is that amount determined by the County.
27. That from the record before the Commission Taxpayer has presented no evidence which would establish that the decision of the County was unreasonable or arbitrary.
28. That therefore the Motion to Dismiss should be granted.

CONCLUSIONS OF LAW

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. Neb. Rev. Stat. §77-1511 (Reissue 1996). The Nebraska Court of Appeals, in interpreting this statute, has held 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).

That pursuant to *Bottorf v. Clay County Board of Equalization*, 7 Neb. App. 162 (1998), "Based upon the applicable law, the Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable

or arbitrary.” Given this mandate, the Commission must grant the County’s Motion to Dismiss as a matter of law.

ORDER

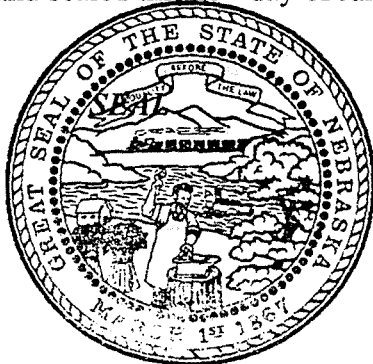
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That the appeal is hereby dismissed.
2. That therefore the order of the Cass County Board of Equalization setting the assessed value of the mineral interests in certain real property legally described as Tax Lots 9, 10, 11, and 12, S ½ of Section 29-11-11, consisting of approximately 11.17 acres, in Cass County, Nebraska, for tax year 1998 in the amount of \$13,200 must stand.
3. That this decision, if no appeal is filed, shall be certified to the Cass County Treasurer, and the Cass 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 20th day of January, 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 25th day of January, 1999.



Mark P. Reynolds, Chairman
