

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

TERRY L. BURKS.	)	
	)	
Appellant.	)	Case No. 98A-312
	)	
vs.	)	
	)	
DAWES COUNTY BOARD OF EQUALIZATION.	)	FINDINGS AND ORDERS AFFIRMING DECISION OF COUNTY
	)	
Appellee.	)	
	)	

Filed: December 10, 1999

Appearances:

For the Appellant:            Raymond C. Burks  
   815 East 8<sup>th</sup> Street  
   Chadron, Ne 69337

For the Appellee:            Dennis D. King  
   Special Counsel, Dawes County Board of Equalization  
   P. O. Box 302  
   Gordon, NE 69343-0302

Before: Commissioners Edwards, Hans and Reynolds

Reynolds, Chairman, for the Commission:

**SUMMARY OF DECISION**

The Tax Equalization and Review Commission affirms the decision of the Dawes County Board of Equalization which denied Taxpayer's protest, and denies Taxpayer's request for a reduction in the assessed value of the subject property.

## PROCEDURAL HISTORY

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 15<sup>th</sup> day of September, 1999, pursuant to a Notice of Hearing issued the 21<sup>st</sup> day of July, 1999.

Raymond C. Burks ("Taxpayer") appeared personally and on behalf of his wife Terry L. Burks at the hearing, and the Dawes County Board of Equalization appeared through Dennis D. King, Special Counsel for the Dawes 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, makes and issues the following Findings of Fact, Conclusions of Law, and a Final Order in this appeal.

## EVIDENCE BEFORE THE COMMISSION

The Commission took notice of the following documents as authorized by Neb. Rev. Stat. §77-5016 (1998 Cum. Supp.) without objection: the Commission's case file for Case No. 98A-312, 98A-313 and 98A-314; the Tax Equalization and Review Commission Brochure; the Nebraska Constitution; the Nebraska State Statutes; 1999 Neb. Laws, L.B. 140; 1999 Neb. Laws,

L.B. 36; 1999 Neb. Laws, L.B. 194; *Title 442, Nebraska Administrative Code* (the Tax Equalization and Review Commission's Rules and Regulations); *Title 298, Nebraska Administrative Code* (the Nebraska Real Estate Appraiser Board Rules and Regulations); The Property Tax Administrator's Published *1998 Ratios and Measures of Central Tendency*, and the 1998 County Profiles for Dawes County; the Property Tax Administrators *1998 Statistical Measures*; 1998 Assessor's Interviews by the Property Tax Division; 1998 Qualified Sales Report; *1999 Formal Plan of Equalization*; *1998 Statewide Equalization Proceedings*; *Nebraska Real Estate Appraiser Board Certification Requirements* (Jan. 1998); *Nebraska Real Estate Appraiser Board Education Core Curriculum* (Jan. 1998); *Nebraska Economic Data BIN*/Nebraska Department of Economic Development (1998); *Nebraska Agricultural Land Valuation Manual* (1998); *Nebraska Assessor's Reference Manual - Volumes 1 and 2* (Reissue 1998); Three standard reference works published by the International Association of Assessing Officials: *Property Assessment Valuation, Second Edition*, Published in 1996, *Property Appraisal and Assessment Administration*, published in 1990, and the *Glossary for Property Appraisal and Assessment*, published in 1997; the Soil Survey for Dawes County; *Uniform Standards of Appraisal Practices* (1999).

The Commission also received certain exhibits and testimony during the course of the hearing. The Commission denied the receipt of Exhibits No. 6, 7, 10 and 12.

#### **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 agricultural real property located in Dawes County legally described as the W $\frac{1}{2}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ W $\frac{1}{2}$  of Section 2, Township 33, Range 48, consisting of approximately 243.86 acres, located in Market Area 4 of Dawes County, Nebraska ("subject property"):
2. That the Dawes County Assessor ("Assessor") proposed valuing the subject property for the purposes of taxation in the amount of \$62,535; as of January 1, 1998 ("assessment date"). (E1).
3. That Taxpayer timely filed a protest of the proposed valuation, and requested that the subject property be valued at \$35,565. (E1).
4. That the basis of the protest was: "This parcel is mostly blow-out land, only good for cattle grazing. I can't imagine anyone wanting to put a home on it. Our 3 parcels are approx. 670 AC. - The list of farm sells [sic] used to place a value on my land were small sells [sic] - The largest 380 AC. This valuation would not hold true for large acres." (E1)
5. That the County denied the protest. (E1)
6. That thereafter, the Taxpayer timely filed an appeal of the County's decision to the Commission. (Appeal Form).

**B.**

**SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS**

1. That Taxpayer testified that his opinion of actual or fair market value of the subject property was \$123 an acre as of the assessment date.
2. That subject property is all grassland. (E15).
3. That the subject property is located 3 ½ miles from the City of Chadron and 1 ½ miles from Highway 20. That the subject property has a well and has been rented out by the Taxpayer since 1989.
4. That the Taxpayer objected to the use of Market Areas in Dawes County during the hearing. That during the hearing Taxpayer alleged that subject property is more comparable to land in Market Area 1 of Dawes County, Nebraska and should be included in that Market Area rather than Market Area 4 where the subject property is located..
5. That the use of market areas is a professionally accepted mass appraisal practice. *Property Assessment Valuation, 2<sup>nd</sup> Ed. p. 85.*
6. That the subject property's North boundary borders Market Area 1, Dawes County, Nebraska. (E22).
7. That from the entire 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 \$62,535.
8. That from the record before the Commission, the County failed to consider the merits of Taxpayer's protest (E1). That such action was unreasonable and arbitrary.
9. That from the record before the Commission, Taxpayer adduced no credible evidence of fair market value which would establish that the County's determination of value for the

subject properties was unreasonable. That therefore the valuation decisions of the County were neither unreasonable nor arbitrary.

10. That therefore the decisions 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 based on the record before the Commission, insufficient evidence has been adduced to establish that the action of the County in this case was unreasonable or arbitrary.
5. 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).
6. 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).
  7. 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).
  8. 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 Dawes County Board of Equalization which set the assessed value of the subject property for tax year 1998 was neither unreasonable nor arbitrary.
  9. That therefore the decision of the Dawes County Board of Equalization must be affirmed.

**ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:**

1. That the order of the Dawes County Board of Equalization setting the assessed value of the subject property for tax year 1998 is affirmed..
2. That Taxpayers' agricultural real property in Case No. 98A-312, legally described as the W½NE¼, E½W½, of Section 2, Township 33, Range 48, in Dawes County, Nebraska, shall be valued as follows for tax year 1998:


Land	\$62,535
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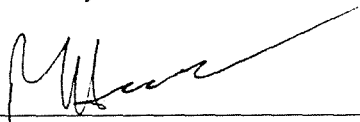
Improvements	\$ -0-
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- Total \$62,535
- 3. That this decision, if no appeal is filed, shall be certified to the Dawes County Treasurer, and the Dawes County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
- 4. That this decision shall only be applicable to tax year 1998.
- 5. That each party is to bear its own costs in this matter.

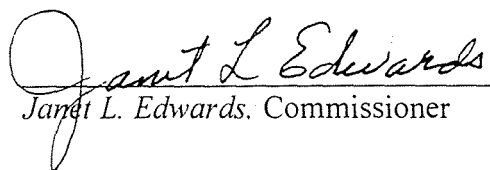
**IT IS SO ORDERED.**

Dated this 10<sup>th</sup> day of December, 1999.

  
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*Mark P. Reynolds*, Chairman

  
\_\_\_\_\_  
*Robert L. Hans*, Commissioner

**Commissioner Edwards dissents as to the Commission's determination of actual or fair market value of the subject property.**

  
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*Janet L. Edwards*, Commissioner

SEAL

