

BEFORE THE NEBRASKA TAX EQUALIZATION  
AND REVIEW COMMISSION

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LEISCH BROTHERS, )  
A Nebraska Partnership, )  
 )  
Appellant, )  
 )  
vs. )  
 )  
BOONE COUNTY BOARD OF )  
EQUALIZATION, )  
 )  
Appellee. )

CASE NO. 99A-172 SCHMID LAW LIBRARY  
UNL COLLEGE OF LAW

DOCKET ENTRY  
DISMISSING THE APPEAL  
AT THE CLOSE OF THE  
TAXPAYER'S APPEAL

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 Madison, Madison County, Nebraska, on the 25<sup>th</sup> day of September, 2000, pursuant to a Notice of Hearing issued the 15<sup>th</sup> day of March, 2000.

Helmut Leisch, one of the partners in Leisch Brothers, a Nebraska Partnership ("the Taxpayer") appeared personally at the hearing, and the Boone County Board of Equalization appeared through David R. Medlin, Boone 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, 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:

**I.  
FINDINGS OF FACT**

From the record, the Commission finds and determines as follows:

**A.  
PROCEDURAL FINDINGS**

1. That the Taxpayer is the owner of record of certain agricultural real property located in Boone County, Nebraska ("the subject property").
2. That the Boone County Assessor ("the Assessor") proposed valuing the subject property in the amount of \$90,275 for purposes of taxation as of January 1, 1999 ("the assessment date"). (E1).
3. That Taxpayer timely filed a protest of the proposed valuation and requested that the subject property be valued in the amount of \$73,395. (E1).
4. That the protest alleged that the subject property was overvalued. (E1).
5. That the County granted the protest in part and determined that the actual or fair market value of the subject property as of the assessment date was \$78,720. (E1).
6. That thereafter, the Taxpayer timely filed an appeal of the County's decision to the Commission. (Appeal Form).
7. That the value of the improvements is not at issue.
8. That at the close of the Taxpayer's case the County moved to dismiss the appeal for failure to adduce evidence of actual or fair market value as of the assessment date and for failure to adduce evidence to establish that the decision of the County was unreasonable or arbitrary.

**B.**  
**SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS**

1. That the subject property consists of approximately 165.41 acres of agricultural land in Boone County, Nebraska. That 37.60 acres of the parcel are planted with either corn or beans, 121.81 acres are devoted to pasture, 2 acres to building site and 4 acres of road.
2. That the Taxpayer has been engaged in farming for at approximately 50 years. That the Taxpayer, either individually, or in partnership, farms approximately 800 acres of crop ground. That of these 800 acres, approximately 470 acres are rented on a "share" basis. That since 1987, a portion of the subject property was in CRP. That the majority of the subject property is now in grass.
3. That the Taxpayer's agricultural operation is comprised of raising livestock and grain.
4. That the Taxpayer offered no opinion of actual or fair market value for the subject property as of the assessment date. That the Taxpayer's request was essentially a request that the assessed value be returned to a previous year's assessed value.
5. That the Taxpayer offered no evidence to establish that the decision of the County was unreasonable or arbitrary.
6. That therefore the County's Motion to Dismiss must be granted.

**II.**  
**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. §77-5016(7) (1999 Supp.) 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 . . . In an appeal to the [Commission from the County Board of Equalization] . . . the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment.” *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).
4. That “An owner who is familiar with his property and knows its worth is permitted to testify as to its value.” *U. S. Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).

5. 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).
6. That the prior years assessment is not relevant to the subsequent year's valuation. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N. W. 2d 451 (1944). *Affiliated Foods Coop v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N. W. 2d 201,206 (1988).
7. That "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." *Bottorf v. Clay County Bd. of Equalization*, 7 Neb. App. 162, 168, 580 N. W. 2d 561. 566 (1998).

**III.  
ORDER**

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

1. That this appeal be and hereby is ordered dismissed.
2. That therefore Taxpayer's agricultural real property legally described as the SW 1/4 of Section 19, Township 18, Range 6, consisting of approximately 165.41 acres, in Boone County, Nebraska, shall be valued as follows for tax year 1999, as determined by the

Boone County Board of Equalization:

Land	\$78,625
Improvements	\$ 95
Total	\$78,720

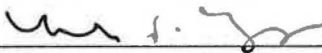
3. That this decision, if no appeal is filed, shall be certified to the Boone County Treasurer, and the Boone County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
4. That this decision shall only be applicable to tax year 1999.
5. That each party is to bear its own costs in this matter.

**IT IS SO ORDERED.**

**I certify that Commissioner Edwards made and entered the above and foregoing Findings and Orders in this appeal on the 25<sup>th</sup> day of September, 2000. The same were approved and confirmed by Commissioner Hans and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5). (1998 Cum. Supp.)**

Signed and sealed this 29<sup>th</sup> day of September, 2000.



  
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Mark P. Reynolds, Chairman