

Page 3

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

A. ALINE DYER,)	
)	
Appellant,)	CASE NO.98A-121
)	
vs.)	ORDER DISMISSING
)	APPEAL FOR FAILURE TO
DAWES COUNTY BOARD OF)	OVERCOME STATUTORY
EQUALIZATION,)	PRESUMPTION
)	
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 Chadron, Dawes County, Nebraska, on the 15th day of September, 1999, pursuant to a Notice of Hearing issued the 21st day of July, 1999.

A. Aline Dyer ("Taxpayer") appeared personally at the hearing. The Dawes County Board of Equalization ("County") appeared through Dennis D. King, Special Appointed Counsel. 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

1. That the Taxpayer is the owner of record of certain agricultural real property as described in the petition ("subject property").
2. That the subject property is located 6/10's of a mile from Highway 2 and 71, it has a well, one-half of it is pine tree covered, and it is 10 miles from the Village of Crawford. The Taxpayer rents out the property for purposes of pasturing cattle. The property is cut through by railroad tracks on the left side, and the Highway runs through the right side of the property. The property has a house located on it, the value of which is not at issue.
3. That the Dawes County Assessor ("Assessor") proposed valuing the subject property for purposes of taxation for tax year 1998 in the amount of \$104,560. (E1).
4. That Taxpayer timely protested that determination of value to the Dawes County Board of Equalization ("County"). (E1).
5. That the County denied the protest. (E1).
6. That Taxpayer timely filed an appeal of that decision to the Commission.
7. That at the close of the Taxpayer's case, the County moved to dismiss the case for failure to overcome the statutory presumption in favor of the County which is set forth in Neb. Rev. Stat. §77-1511 (Reissue 1996).
8. That Taxpayer has adduced no evidence of actual or fair market value of the subject property.
9. That there is therefore, no evidence upon which the Commission could conclude that the decision of the County was unreasonable or arbitrary.

CONCLUSIONS OF LAW

1. 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.
2. 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).
3. That since no evidence has been adduced to show that the decision of the County was unreasonable or arbitrary, the Taxpayer has failed to overcome the presumption afforded the County in Neb. Rev. Stat. §77-1511 (Reissue 1996).
4. 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:

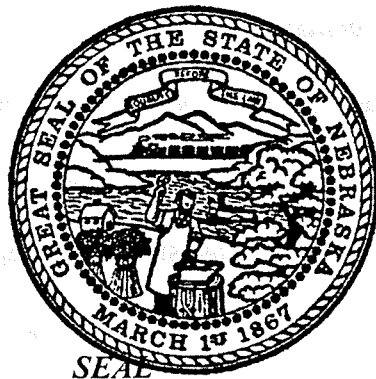
1. That this appeal is dismissed with prejudice.
2. That therefore Taxpayer's agricultural real property, legally described as Pt S ½ in Section 25, Township 30, Range 52, consisting of approximately 312,69 acres, in Dawes County, Nebraska, shall be valued for tax year 1998, as determined by the Dawes County Board of Equalization, as follows:


Land	\$80,055
Improvements	\$24,505
Total	\$104,560

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.

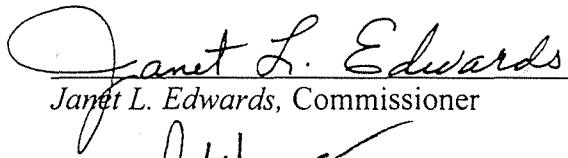
IT IS SO ORDERED.

Signed and sealed this 21st day of September, 1999.

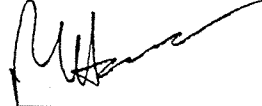




Mark P. Reynolds, Chairman



Janet L. Edwards, Commissioner



Robert L. Hans, Commissioner