BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION

FIRSTIER BANK, Appellant, vs. LANCASTER COUNTY BOARD OF EQUALIZATION, Appellee.	)	Case No. 96R-161 FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW this matter comes before the Commission on this 18th day of February, 1997, on appellee's Motion to Confess Judgment. The Commission, being duly advised in the premises, FINDS, ORDERS, ADJUDGES AND DECREES AS FOLLOWS:

1. That the Commission has jurisdiction over the parties and the subject matter hereto.

2. That at all times pertinent hereto First Bank Systems, Inc. was the real party in interest herein and was the owner of and was responsible for the payment of taxes on the property described as follows:

> Irregular Tract, Lot 154, SW 21-10-7, Lincoln, Nebraska, commonly known as 100 North 56th Street. Parcel number 17-21-300-020-000. Alternate key 0724475.

3. That for the 1996 tax year the appellee set the value of the appellant's property for tax purposes at $1,435,900.

4. That appellant perfected the instant appeal alleging that the value set by the appellee for the subject property for the 1996 tax year was too high.

5. That on the 18th day of February, 1997, the appellee, pursuant Neb. Rev. Stat. § 77-1510.01 (1995 Supp.) and

Chapter 5, section 002.02, filed a motion seeking approval to confess judgment and containing an offer to confess judgment at a value of $1,140,000 for the 1996 tax year, each party to pay its own costs.

6. That on the 18th day of February, 1997, First Bank Systems, Inc. filed herein a written acceptance of appellee's offer to confess to judgment.

7. That appellee's Motion to Confess Judgment should be and hereby is granted.

8. That the action of the appellee, Lancaster County Board of Equalization setting the value of the subject property at $1,435,900 for the 1996 tax year is hereby vacated and set aside.

9. That the value of the subject property for the 1996 tax year is hereby set at $1,140,000, which value represents land value of $525,330 and an improvement value of $614,670.

10. That this decision shall be certified to the Lancaster County Clerk, the Lancaster County Assessor, and the Lancaster County Treasurer, and said officials are hereby directed to correct the tax records of Lancaster County to reflect the values established herein.

11. That each party shall pay its own costs herein.

DATED this 18th day of February, 1997.

BY THE COMMISSION:

Chairman

APPROVED AS TO FORM:

Karl Baltes

KARL J. BALTES
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BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

EMIL LAVERN OSEKA, Appellant, v. SHERMAN COUNTY BOARD OF EQUALIZATION, Appellee.	)	Case No. 96R-44 FINDINGS AND ORDERS (DEMURRER SUSTAINED)

Filed February 19, 1997

Appearances:

For the Appellant: Emil L. Oseka
RR 2, Box 108
Loup City, NE 68853

For the Appellee: Curtis A. Sikyta
Attorney at Law
314 South 14th Street
P. O. Box 128
Ord, NE 68862-0128

Before: Commissioners Edwards, Hans and Reynolds

Reynolds, Chairman:

SUMMARY OF DECISION

County filed a Demurrer, alleging that the Tax Equalization and Review Commission lacked jurisdiction over the subject matter of the appeal. The Commission sustains the Demurrer and dismisses the case.

NATURE OF THE CASE

Emil L. Oseka ("Taxpayer") owns certain agricultural real property located in Sherman County, Nebraska. The appeal which was filed with the Tax Equalization and Review Commission ("Commission") was not accompanied by a Form 422 or other evidence that a protest had been filed with County. In the Appeal, Taxpayer requested (1) that agricultural property within Sherman County be equalized with agricultural real property in Valley County; (2) in the alternative that three levels of value be established for all agricultural land in Sherman County. (Appeal at page 2). County filed a demurrer alleging that "(1) The appeal does not set forth a cause of action subject to the review requested; (2) The request made before the Sherman County Board of Equalization was for items not subject to review of the Sherman County Board of Equalization; (3) The Sherman County Board of Equalization was unable to act on the protest of the Appellant because they had no authority to adjust the classifications of land and were limited by the land valuation manual; and (4) The protests did not go to any individual parcel, but to classes of land throughout the county and adjoining counties."

DUTIES OF THE PARTIES

On or before June 1, the county assessor shall, before filing the certificate for real property, notify the record owner of every item of real property which has been assessed at a value higher than in the previous year. Neb. Rev. Stat. §77-1311.02 (Reissue 1996). Protests by taxpayers regarding such increases in valuation must be filed with the County Board of Equalization between June 1 and July 1 of each year. Neb. Rev. Stat. §77-1502 (Reissue 1996). The county board of equalization must, between June 1 and July 25 of each year, fairly and impartially equalize the values of all items of real property in the county "except agricultural and horticultural land . . . " so that all real property is assessed uniformly and proportionately. Neb. Rev. Stat. §77-1504 (Reissue 1996).

ANALYSIS

County alleged in its demurrer that County was "unable to act on the protest." The Commission therefore determines that Taxpayer did in fact file a protest with County, and that the protest was denied. County also alleged in its demurrer that "The request made before the Sherman County Board of Equalization was for items not subject to review of the Sherman County Board of Equalization."

From the appeal and the allegations made in the demurrer, it can be inferred that the subject matter of the appeal, i.e., equalization with another county and changes in valuation of classes of agricultural real property, were also presented to County, and that County denied the protest for lack of subject matter jurisdiction.

FINDINGS OF FACT

The Commission, in determining the case, is bound to consider only that evidence which has been made a part of the record before it. No other information or evidence may be considered. *See* Neb. Rev. Stat. §77-5016(3) (Reissue 1996). From the pleadings submitted the Commission finds and determines as follows:

I. That Taxpayer owns certain agricultural real property in Sherman County, Nebraska, which is subject to taxation.

II. That Taxpayer timely filed a written protest with the County.

III. That County declined to act on Taxpayers' protest for lack of subject matter jurisdiction.

JURISDICTION

The jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (Reissue 1996).

STANDARD OF REVIEW

ANALYSIS

I.

The "Unreasonable or Arbitrary" Standard in the Courts

Neb. Rev. Stat. §77-1511 (Reissue 1996) states "The commission shall affirm the action taken by the board unless evidence is adduced establishing that the action of the board was unreasonable or arbitrary or unless evidence is adduced establishing that the property of the appellant is assessed too low."

The Nebraska Supreme Court, in determining its role within the assessment process, held "In reviewing the actions of tribunals created by law for ascertaining the valuation and equalization of property for taxation purposes, courts will not usurp the functions of such tribunals. It is only where such assessed valuations are not in

accordance with law, or it is made to appear that they were made arbitrarily or capriciously, that courts will interfere." *Hastings Bldg. Co. V. Board of Equalization of Adams County*, 190 Neb. 63, 72, 206 N.W.2d 338, 344 (1973), citing *Newman v. County of Dawson,* 167 Neb. 666, 94 N.W.2d. 47, (1959). This position was in keeping with an earlier case where the Court held:

> "The court is not a board of review to correct errors. It is solely where there is evidence a systematic purpose on the part of a taxing board to cast a disproportionate share of the public burden on one taxpayer, or classes of taxpayers that the court will intervene." *LeDioyt v. Keith County,* 161 Neb. 623, 74 N.W.2d 455, 462 (1956).

The Court then enunciated the standard which the courts in this state would apply when taxpayers challenge the assessed valuations of real property.

> "In an appeal to the county board of equalization or to the district court, and from the district court to this court, 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." *Hastings Bldg. Co. V. Board of Equalization of Adams County*, 190 Neb. 63, 72, 206 N.W.2d 338, 344 (1973), citing *Lexington Bldg. Co. V. Board of Equalization*, 186 Neb. 821, 187 N.W.2d 94 (1971).

The effect of this holding is to interpret, and therefore to define, "unreasonable or arbitrary" as "grossly excessive and the result of an illegal act." Under such circumstances, the history of such an interpretation requires examination. The holding in *Hastings Bldg. Co.* cited *Newman, supra*, which in turn cited *LeDioyt v. County of Keith,* 161 Neb. 615, 74 N.W.2d 455 (1956). The *LeDioyt* case also dealt with a challenge to the assessed valuation of real property. In that case, the Court held "In *Daniels v. Board of Review*, 243 Iowa 405, 52 N.W.2d 1, 9 it is said:

> 'A final word should be said as to the taxpayers' burden in these cases. On the claim of assessment in excess of actual valuation something more than a difference of opinion must be shown. Justice Bliss in the recent case of *Clark v. Lucas County Board of Review*, had this to say of the taxpayer's burden on appeal from an assessment:

> "The burden on the complaining taxpayer is not met merely by showing a difference of opinion between his witnesses and the assessor, unless it is manifest that the assessment is grossly excessive and is a result of the exercise of the will and not of the judgment." [citations omitted.]

Although not reported, Justice Bliss held "Even though the complaining taxpayer be relieved from the burden of overcoming the presumption that the assessors valuation is correct, he nevertheless **has the statutory burden of proof establishing his contention that the valuation is excessive, inadequate, or inequitable.**" *Clark v. Lucas County Board of Review*, 242 Iowa 80, 96, 44 N.W.2d 748, 757 (1950), citing Sec 441.13, Code 1950, I.C.A.. The Iowa Court then went on to interpret the statutory burden as requiring the taxpayer to produce evidence that the valuation was "grossly excessive" and the result of what would amount in Nebraska to an illegal act. This conclusion formed the basis of the Nebraska Supreme Court holding.

II.
The "Unreasonable or Arbitrary" Standard before the Commission

The Tax Equalization and Review Commission is not a court. The Commission was created pursuant to state law to provide for an accessible and affordable system of review of valuation decisions. Under such circumstances, applying the standard devised by the Nebraska Supreme Court to the Commission would be presumptuous and ill-advised.

Therefore, the Commission must adopt a standard applicable to cases it hears and decides. This standard must be in keeping with the precept that tax laws are to be strictly construed, and construed in the light most favorable to the taxpayer. *See, e.g., Nebraska Annual Conference of the United Methodist Church v. Scotts Bluff County Board of Equalization*, 243 Neb. 412, 416, 499 N.W.2d. 543, 547 (1993), and *Sioux City and Pacific R.R. v. Washington County,* 3 Neb. 30, 32 (1873). In determining that standard, resort must be made to the language of the statute. The Nebraska Supreme Court has often held that statutory construction is a simple task. The Court has held "In construing a statute, it is presumed that the Legislature intended a sensible rather than an absurd result . . . Statutory language is to be given its plain and ordinary meaning . . ." *Metropolitan Utilities Dist. v. Twin Platte Natural Resources Dist.*, 250 Neb. 442, 451, 550 N.W.2d 907, 913 (1996).

Therefore, the standard is that set forth in the statute. The word "arbitrary" is

defined in the Webster's New Collegiate Dictionary (1981) as "arising from will or caprice; selected at random or without reason;" and "unreasonable" is defined as "not governed by or acting according to reason, not conformable to reason; absurd; exceeding the bounds of reason or moderation." Under these definitions, the Commission must affirm the decision of a county board of equalization unless that decision was determined by will or caprice or selected at random; or if the board's decision was not governed by reason; was absurd; or exceeded the bounds of reason or moderation.

CONCLUSIONS OF LAW

The valuation of agricultural real property must be made according to the agricultural land valuation manual issued by the Property Tax Administrator. Neb. Rev. Stat. §77-1361 (Reissue 1996). The Agricultural and Horticultural Land Valuation Board is charged with the following duties:

> "After April 1 and on or before April 15 of each year (a) increase or decrease by percentage the value of a class or subclass of agricultural and horticultural land in any county in its land manual area in order to establish equalization of value between the various counties in its land manual area effective for the year, (b) make necessary changes in classification of agricultural and horticultural land within its land manual area if the evidence discloses incorrect classification, and . . . "

Neb. Rev. Stat. §77-1318 (Reissue 1996). Any affected person may appeal an action of an agricultural and horticultural land valuation board ("AHLVB") which increases or decreases values within a county to the State Board of Equalization and Assessment ("SBEA"). Neb. Rev. Stat. §77-1384 (Reissue 1996). That appeal must be filed with the SBEA within ten days of the date of the action of the AHLVB. Neb. Rev. Stat. §77-1384 (Reissue 1996). The SBEA must hold a hearing on the appeal and enter an order prior to May 15. Neb. Rev. Stat. §77-1384 (Reissue 1996).

These statutory requirements make it clear that Sherman County had no authority (i.e., jurisdiction) to consider the issues raised by Taxpayer. County only had the authority to consider changes to individual parcels of property. Furthermore, County does not have any authority to equalize agricultural real property values at any time, nor does it have any authority to adjust the valuations of classes or subclasses of property. That authority in 1996 was reserved to the SBEA. In 1996

the SBEA was required to act between April 1 and May 15. Neb. Rev. Stat. §§77-506 and 77-509 (Reissue 1996). The Commission must, therefore, and hereby does conclude as a matter of law the Sherman County Board of Equalization had no jurisdiction to consider the matters raised in Taxpayers protest. The County therefore properly declined to order the actions requested by Taxpayer. Furthermore, under the standard enunciated by the Commission, that action was neither arbitrary nor capricious.

The Commission's jurisdiction is limited to those matters set forth in Neb. Rev. Stat. §77-5004 (Reissue 1996). It should also be noted that an appellate body cannot acquire jurisdiction over an issue if the body from which the appeal is taken had no jurisdiction of the subject matter. Furthermore, the parties cannot confer subject matter jurisdiction on the appellate body by either acquiescence or consent. *See, e.g., Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956). Since Sherman County had no jurisdiction to consider the matters raised, the Commission has no jurisdiction to hear the case. The Commission must, therefore, and hereby does conclude as a matter of law that the demurrer filed by Sherman County must be sustained, and this appeal dismissed.

ORDER

IT IS, THEREFORE, ORDERED that this appeal is dismissed, and that each party should bear its own costs.

IT IS SO ORDERED.

Dated this 19th day of February, 1996.

Mark P. Reynolds, Chairman

Janet L. Edwards, Commissioner

Robert L. Hans, Commissioner

NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION
EQUALITY BEFORE THE LAW
Seal
JANUARY 1, 1996