

NATURE OF THE CASE

JoAnn C. Kuhns ("Taxpayer") owns certain agricultural real property located in Seward County, Nebraska. Taxpayer filed a protest with the Seward County Board of Equalization ("County") alleging that the real property "is improperly classified as irrigated rather than dryland because, there are no irrigation wells on this property and no water under it. Improper valuation and it exceeds fair market value of the property." By way of relief, Taxpayer requested that the proposed 1997 valuation be reduced. County denied the protest, and increased Assessor's value of \$84,888 (due to recounting of irrigated acres as per Consolidated Farm Services Agency (CFSA) map), to \$104,250 from which decision Taxpayer appeals. This appeal was consolidated for purposes of hearing with ten other appeals of Appellant, with consent of the parties.

DUTIES OF THE PARTIES

A taxpayer who is dissatisfied with the county assessor's determination of assessed value of real property must file a written protest with County. Neb. Rev. Stat. §77-1502 (Reissue 1996).

A 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).

"For purposes of equalization of the valuation of any protested real property, the county board of equalization shall make its adjustment so that the value of the protested property compares to the average level of value of the class or subclass of property in which the protested

property is categorized.” Neb. Rev. Stat. §77-1504 (Reissue 1996).

EVIDENCE BEFORE THE COMMISSION

Judicial notice was taken, without objection, of the pleadings in Case Files 97R-293 thru 97R-303; the *Nebraska Assessor's Reference Manuals*, Volumes 1 and 2; the *Nebraska Agricultural and Horticultural Land Valuation Manual*; the Nebraska Constitution; the Nebraska State Statutes; Title 442 of the Administrative Code (Tax Equalization and Review Commission's Rules and Regulations); the standard reference work *Property Assessment Valuation, Second Edition*; the standard reference work *Property Appraisal and Assessment Administration*; the standard reference work *Glossary for Property Appraisal and Assessment*; the Property Tax Division of the Department of Revenue's published 1997 ratios and measures of central tendency which are published pursuant to Neb. Rev. Stat. §77-1327(6); the 1997 County Profiles for Seward County; the 1997 Equalization Proceedings of the Tax Equalization and Review Commission; the *Uniform Standards of Profession Appraisal Practices*, 1997 Edition; the Soil Survey for Seward County; *Title 298, Nebraska Administrative Code* (the Nebraska Real Estate Appraiser Board's Rules and Regulations); the Nebraska Real Estate Appraiser Board Certification Requirements; and the Nebraska Real Estate Appraiser Board Education Core Curriculum. Taxpayer offered Exhibits One and Seven and both were received without objection; County offered Exhibits Two through Six and all were received without objection. County objected to Eldon Kuhns representing JoAnn C. Kuhns as nothing in the County records show Eldon Kuhns an owner of the subject properties. The Commission required Taxpayer to provide a copy of his designation as a co-trustee of the JoAnn C. Kuhns Living Trust

which copy was received in the Commission office February 23, 1998. However County accepted Eldon Kuhns ownership of the subject properties via trustee as sworn to by Taxpayer.

ANALYSIS

The first issue before the Commission was the question of Eldon Kuhns eligibility to represent the owner as a co-trustee of the JoAnn C. Kuhns Living Trust. Upon receipt of the "Designation of Co-Trustee" document in the Commission office February 23, 1998, it is noted that the document referred to was executed the 24th day of June 1997 in Yellowstone, Montana. Assessment date for this appeal was January 1, 1997 12:01 A.M. in Seward County, Nebraska. The County Board of Equalization action, as indicated on Form 422, was July 22, 1997. However, County, accepted his eligibility to testify on JoAnn C. Kuhns behalf, therefore, the Commission only notes this for the record.

The subject property, in the instant case, is located in N1/2 NW1/4 Section 13, Township 9, Range 2, containing 78.34 acres, in Seward County, Nebraska. This parcel does not have an irrigation well, but is irrigated from another source. Taxpayer's contention is that an irrigation well is not likely because of the depth required to reach water, and uncertainty as to the presence of water under the subject property. Taxpayer alleges that if this property was sold it would have to be sold as dry cropland, not irrigated cropland.

Taxpayer contends that the subject property is most comparable to a sale in the N1/2NE1/4 Section 19, Township 9, Range 3 from Ackerman to Springer. (This sale was cited as the most comparable for all cases of Taxpayer.) It was a 75.39 acre tract which sold for \$130,000 as shown in Exhibit #5, page two. County's record shows 10.78 acres dry cropland, 62.6 acres irrigated cropland and 2.01 acres "other". Taxpayer contends the selling price

included irrigation equipment with an estimated value of \$15,000 to \$25,000. No evidence was adduced to support this contention. County's testimony is that no personal property was listed on the Form 521 filed in the County Clerk's office. Since the purchaser of the property executes the Form 521, under oath, the Commission, from the record before it, must conclude that no personal property was included in the purchase price.

The subject property consists of 75.34 acres of irrigated crop land and 3 acres of road right of way, for a total acre count of 78.34 acres. County Exhibit #5 shows a map with the subject properties colored in blue and eighteen area sales in orange, with a spread sheet showing the data for the eighteen sold properties listed. The sale time frame, for agricultural property, as prescribed by the Property Tax Administrator for Tax Year 1997 was July 1, 1993 thru June 30, 1996. Of the eighteen sales, seven were after the prescribed time frame. Those seven were dated 10/96; 1/97; 1/97; 3/97; 3/97; 5/97; and 6/97 and were not given any weight in the consideration of Exhibit #5. Of the remaining eleven sales they range in date of sale from 10/94 thru 10/96 with number of acres from 51.56 acres to 151.38 acres. Only three of the sales had irrigated acres and they sold, dollars per acre, as follows: Book/Page 118-374 for \$1,896; Book/Page 119/680 for \$1,812; and Book/Page 77-37 MISC for \$1,700. The remaining eight sales were mixed dry cropland and grassland and sold from a low of \$625 per acre to a high of \$2,025 per acre. The subject property consists of 78.34 acres valued at \$104,250 or \$1,330 per acre assessed value and \$1,663 fair market value per acre, which is lower than any of the three irrigated sales in Exhibit #5. The comparable, chosen by Taxpayer, the Ackerman to Springer sale having 75.39 acres and selling for \$130,000, reflects a market value price per acre of \$1,724; assessed at 80% would be \$1,379, both higher than the subject property. This evidence does not support

Taxpayer's allegation that the subject property is overvalued either as to fair market value or in comparison to like properties in Seward County.

FINDINGS OF FACT

The Commission, in determining cases, 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. Neb. Rev. Stat. §77-5016 (3) (1997 Supp.). The Commission may, however, evaluate the evidence presented utilizing its experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016 (5) (1997 Supp.).

From the pleadings and the evidence contained in the record before it, the Commission finds and determines as follows:

1. That Taxpayer is the owner of agricultural property located in Seward County, Nebraska.
2. That Taxpayer was dissatisfied with the valuation placed on its agricultural property for Tax Year 1997.
3. That the Commission does not have the authority to change the classification of soil types as determined by the Federal Soil Conservation Service. Furthermore, the Commission does not have the authority to change the conversion of soil types into Land Valuation Groups as determined by the Property Tax Division and published in the Nebraska Agricultural Land Valuation Manual.
4. That the subject property has irrigated acres certified with the Consolidated Farm Service Agency for purposes of government payments and programs.
5. That the allegation that the subject property is valued above its fair market value is not supported by the evidence.

6. That County testified that the median ratio and measures of central tendency for agricultural property were within the acceptable range of value for all classes of agricultural property as required by Nebraska Statutes.
7. That the County Assessor's testimony was that she followed the guidelines of the Nebraska Agricultural Land Valuation Manual's definition for irrigated land at page 66 which states in pertinent part: "includes all land where water is applied".
8. That from Exhibit Five using the eleven properties that sold within the proper sales time frame, only three properties contained irrigated acres and all three sold for more per acre than the fair market value of the subject property, which calculates to \$1,663 per acre.
9. That no evidence was adduced to support the contention that the comparable sale chosen by the Taxpayer as the most comparable to the subject property included the value of irrigation equipment. Furthermore, the uncontroverted testimony of the County was that no dollar amount for personal property was deducted from the sale price on the Form 521 for the comparable sale identified as Book & Page 120-351, Exhibit Five.
10. That the comparable property, Exhibit 17, chosen by the Taxpayer, does not have as many irrigated acres as the subject property, which has 75.34 irrigated acres while comparable property has 62.60 irrigated acres.

JURISDICTION

Jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (1997 Supp.).

STANDARD OF REVIEW

The Commission must affirm the decision of the county board of equalization unless the appellant demonstrates by a preponderance of the evidence that the decision made by the county board of equalization was not governed by reason, was absurd, exceeded the bounds of reason or moderation, or was made in disregard of the facts or circumstances and without some basis which would lead a reasonable person to the same conclusion. Title 442, Nebraska Administrative Code, Chapter 5, Section 018. *See also Harrison Square v. Sarpy Cty. Bd. Of Equal.*, 6 Neb. App. 454 (1998).

CONCLUSIONS OF LAW

First, from the record before it, the Commission concludes as a matter of law that it has jurisdiction over both the parties and the subject matter of this appeal. The Commission further concludes as a matter of law that, pursuant to Title 442, Nebraska Administrative Code, the Appellant is required to establish by a preponderance of the evidence that the decision of the Seward County Board of Equalization was unreasonable or arbitrary. Finally, the Commission must, for the reasons set forth above, and pursuant to Neb. Rev. Stat. §77-1510 (Reissue 1996), hereby does conclude as a matter of law that from the record before the Commission the Taxpayer has not met its burden of proof, and therefore the action of the Seward County Board of Equalization should be affirmed.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:


1. That the decision of the Seward County Board of Equalization which denied Taxpayers' protest is affirmed.
2. That Taxpayer's agricultural real property legally described as N1/2NW1/4 Section 13, Township 9, Range 2, Seward County, Nebraska shall be valued as follows for tax year 1997:

Land	\$ 104,250
Improvements	\$ 0
Total	\$ 104,250

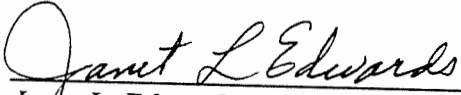
3. That this decision, if no appeal is filed, shall be certified within thirty days to the Seward County Treasurer, and the Seward County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
4. That this decision shall only be applicable to tax year 1997.
5. That each party is to bear its own costs in this matter.

IT IS SO ORDERED.

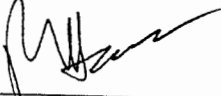
Dated this 18th day of June, 1998.



Mark P. Reynolds, Chairman



Janet L. Edwards, Commissioner



Robert L. Hans, Commissioner

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