

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

LEO E. METTENBRINK,)	
)	
Appellant,)	CASE NO.98A-176
)	
vs.)	
)	
HALL COUNTY BOARD OF)	DISMISSAL FOR FAILURE TO
EQUALIZATION,)	OVERCOME STATUTORY
)	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 Grand Island, Hall County, Nebraska, on the 16th day of March, 1999, pursuant to a Notice of Hearing issued the 13th day of January, 1999.

Leo E. Mettenbrink ("Taxpayer") appeared through his wife, who appeared without counsel at the hearing, and the Hall County Board of Equalization ("County") appeared through 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 certain real property as described in the petition ("subject property").
2. That the Taxpayer acquired the subject property in 1986 for \$82,500.
3. That the County Assessor proposed valuing the land component of the subject property for purposes of taxation for tax year 1998 in the amount of \$154,751.
4. That Taxpayer timely protested that determination of value to the Hall County Board of Equalization ("County").
5. That the County denied the protest, as to the land component but reduced the assessed value of the improvements from ^ to ^.
6. That Taxpayer timely filed an appeal of that decision to the Commission.
7. That the building component of the assessed value of the subject property is not at issue in this appeal.
8. 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).
9. That Taxpayer has adduced no evidence of actual or fair market value of the land component of the subject property.
10. That there is therefore, no evidence

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) as a matter of law.
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 real property, legally described as part of the SE ¼ of Section 10 Township 12 Range 10, consisting of 148.11 acres more or less, in Hall County, Nebraska, shall be valued for tax year 1998, as determined by the Hall County Board of Equalization, as follows:

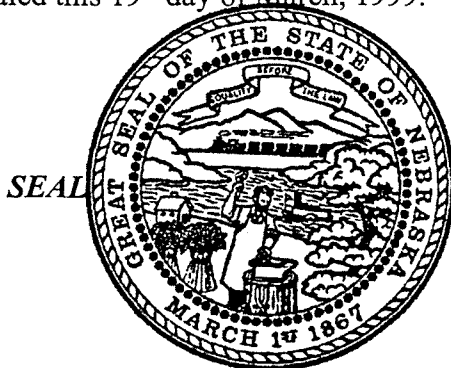
Land	\$154,751
Improvements	\$ 73,864
Total	\$228,615


3. That this decision, if no appeal is filed, shall be certified to the Hall County Treasurer, and the Hall 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.

The above and foregoing Findings of Fact, Conclusions of Law, and Order were approved by a quorum of the Commission, and entered of record on the 16th day of March, 1999, and are therefore deemed to be the Order of Commission in this case, pursuant to Neb. Rev. Stat. §77-5005. (Reissue 1996).

Signed and sealed this 19th day of March, 1999.





Mark P. Reynolds, Chairman