

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

JEANNE V. QUINN,

)

Case No. 96R-0191

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Appellant,

)

)

vs.

)

FINDINGS AND ORDERS

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)

KIMBALL COUNTY BOARD OF  
EQUALIZATION,

)

)

Appellee.

)

)

Filed September 5, 1997

Appearances:

For the Appellant:

Jeanne V. Quinn  
HC 63, Box 94C  
Bushnell, NE 69128

For the Appellee:

David L. Wilson, Esq.  
Kimball County Attorney  
116 W. 2nd Street  
Kimball, NE 69145

Before: Commissioners Edwards, Hans and Reynolds

Edwards, Commissioner, for the Commission:

**SUMMARY OF DECISION**

The Commission reverses the decision of the Kimball County Board of Equalization which denied Taxpayer's protest, and grants Taxpayer's request for a reduction in assessed value of the subject property.

### NATURE OF THE CASE

Jeanne V. Quinn ("Taxpayer") owns certain agricultural real property legally described as 60 acres in part of NE1/4 North of UPRR in Section 35, Township 15 North, Range 57 West located in Kimball County, Nebraska. Taxpayers filed a protest with the Kimball County Board of Equalization ("County") alleging that the classification of the subject property as "recreational" and the resultant increase in value was not equitable. By way of relief, Taxpayer requested that the proposed 1996 valuation of \$32,157 be reduced to \$6,140. County denied the protest, from which decision Taxpayer appeals.

### 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).

### ANALYSIS

The Tax Equalization and Review Commission ("Commission") took judicial notice of

the following items, without objection: Case File 96R-0191; *Marshall Swift Residential Cost Handbook*; *Nebraska Agricultural Land Valuation Manual*; Nebraska Assessor's Reference Manual, Volumes 1 and 2 (Reissue 1996); Nebraska Constitution; Nebraska State Statutes; LB397; the I.A.A.O. textbook, *Property Assessment Valuation, Second Edition*; the Property Tax Division of the Department of Revenue Published 1996 Ratios and Measures of Central Tendency as required by Neb. Rev. Stat. §77-1327 (6); the Kimball County Agland and Residential County Profiles; Title 442 of the Administrative Code; and Uniform Standards of Professional Appraisal Practices (USPAP).

Taxpayer offered Exhibits 1 and 2 which were not received upon the sustained objection of the County Attorney. County offered Exhibit 3 which was received except for the sustained objection to the letter to Diane Diemoz.

Taxpayer testified that she purchased the subject property on March 11, 1995 for \$30,000. There was a well and septic tank on the property and an older shed. (The newspaper ad for the subject property listed 3 wells.) Taxpayer alleges that she intended to raise sheep and goats on the property and to live there. Taxpayer further contends that she currently has her permanent residence at this address. In 1996 she had not moved as she had a house to sell in Lincoln. She leases the alfalfa and hay ground to a renter and sold her share of the crop to the renter in 1995 and in 1996. There is a lake located across the highway and railroad tracks.

Taxpayer purchased a 1969 Mobile Home and placed it on the subject property in 1995.

County Exhibit 3 contains photographs of the subject property, the property record card, comparable mobile home sales and agricultural sales. The Land Valuation Summary, contained in Exhibit 3, shows that the land was classified as follows prior to the recreational classification:

	36.25 Acres	2A1
	5.75 Acres	4A
	5.00 Acres	2G1
	12.00 Acres	4G
	1.00 Acre	Site
TOTAL	60.00 Acres	

The County Assessor received information that the property was listed for sale as "recreational" property and determined that the price per acre exceeded average Kimball County sales prices. Therefore, she created a subclass of property and applied recreational values to the property for 1996 as follows:

	1.00 Acre	Site @ \$5,000	=	\$ 5,000
	59.00 Acres	Rec.@ \$ 400	=	\$23,600
TOTAL	60.00 Acres		=	\$28,600

The mobile home was first valued as a 1979 but that error was corrected by the County Board of Equalization and a value of \$3,557 was placed on the improvements for 1996. The total value placed on the subject property for tax assessment for 1996 was \$32,157.

The evidence shows that Taxpayer paid \$500 per acre for Kimball County land with irrigated crop capability (42 acres) and the remaining 17 acres in pasture and 1 acre for homesite. However, no evidence nor testimony addressed whether or not there are two wells or that the irrigation was being utilized by Taxpayer. From County's Exhibit 3, grassland sales prices range from \$77 per acre to \$124 per acre. However, no corresponding exhibit was given for irrigated crop land sales prices in Kimball County. Since 42 acres of this parcel are classified as irrigated that would have a significant impact on the overall value of both market value and assessed value. However, that issue was not clarified in the instant case. The 1996 **assessed value**, in Area 1 (where the Assessor testified the subject property is located and the table in

Exhibit 3 lists values) for 2A1 was \$310 and 4A was \$110. Those figures represent 80% of market value, making the indicated 100% market price \$387.50 for 2A1 and \$137.50 for 4A. Taxpayer testified that her requested assessed value of \$6,140 was too low and not representative of it's market value.

No evidence was adduced to show that this property was located, used, or changed in any way from the previous owner. County testified that the lake is not a State Recreation area. It is owned by the Natural Resource District (NRD). No other property in the area is classified as "recreational". One sale should not be the basis for creating a property subclass for just one property. "The sales comparison approach is most applicable when sufficient sales data are available for similar properties." (*Property Assessment Valuation, Second Edition.*) The County Assessor testified that no other sales similar to the subject property occurred in the sales data base used for setting 1996 assessed values.

The record before the Commission shows that the Taxpayer established by clear and convincing evidence that the County was arbitrary and unreasonable in not reducing the valuation of the subject property.

#### 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) (Reissue 1996). The Commission may, however, evaluate the evidence presented utilizing it's experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016 (5) (Reissue 1996).

From the pleadings and the evidence the Commission finds and determines as follows:

1. That Taxpayer is the owner of real property legally described as part of the NE1/4 north of UPRR Section 35, Township 15, Range 57, located in Kimball County, Nebraska.
2. That Taxpayer was dissatisfied with the 1996 assessed value placed on the subject property by the County Assessor and timely filed a protest with County.
3. That after a hearing County denied Taxpayer's request for a reduction in value from which decision Taxpayer properly filed an appeal with the Tax Equalization and Review Commission.
4. That the subject property contains 60 acres that were reclassified for 1996 as "recreational" land by the County Assessor.
5. That no other land in the area is classified as recreational, regardless of the proximity to the lake.
6. That the lake is owned by the NRD and is not developed for recreational uses.
7. That Taxpayer placed a 1969 mobile home upon the subject property in 1995.
8. That Taxpayer currently has the subject property as her place of residence, but had not moved as of January 1, 1996.
9. That the subject property's 60 acres were previously classified with 42 acres of irrigated land, 17 acres of grassland, and 1 acre of homesite.
10. That no evidence was adduced to show that the property had been used for any purpose different than that of the previous owner, i.e. grass was hayed, alfalfa was sold, no new buildings were added, the 1969 mobile home replaced a mobile home previously there.
11. That the subject property land value should be calculated based on the assessor's land classification prior to using the "recreational" classification. Multiplying the number of

acres in each classification by the value assigned by the assessor for 1996 as set forth in the "1996 Ag Land Values and Codes" offered as a part of Exhibit 3.

- 12. That the subject property 1996 improvement value be left the same as determined by the Kimball County Board of Equalization at \$3557.
- 13. That the evidence supports the Taxpayer's contention that the subject property is misclassified as "recreational" and the assessed value is too high.

**JURISDICTION**

Jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (Reissue 1996), as amended by L.B. 397 (1997 Session).

**STANDARD OF REVIEW**

**ANALYSIS**

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). The definitions of the terms "unreasonable" and "arbitrary" are therefore the plain and ordinary definitions of those terms. "Unreasonable" is defined as "not governed by or acting according to reason, not conformable to reason; absurd; exceeding the bounds of reason or moderation" in *Webster's New Collegiate Dictionary* (1981).

The Supreme Court has explained that an administrative decision is "arbitrary" when it is made in disregard of the facts or circumstances and without some basis which would lead a reasonable person to the same conclusion. *Ponderosa Ridge LLC v. Banner County*, 250 Neb. 944, 554 N.W. 2d 151 (1996); *Central Platte NRD v. City of Fremont*, 250 Neb. 252, 549 N.W. 2d 112 (1996).

**CONCLUSIONS OF LAW**

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 the action of the Kimball County Board of Equalization should be reversed.

**ORDER**

IT IS THEREFORE ORDERED as follows:

1. That the decision of the Kimball County Board of Equalization which denied Taxpayers' protest is reversed.



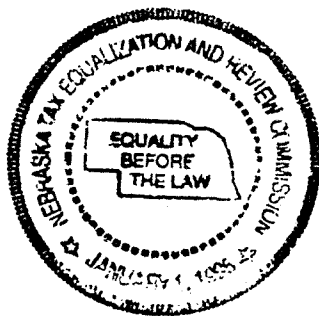
- 2. That Taxpayers' real property legally described in the petition, located in Kimball County, Nebraska shall be valued as follows for tax year 1996:

Land	\$13,556	Method of calculation for land value:
Improvements	\$ 3,557	2A1 36.25Acres X \$310@ = \$11,238
Total	\$17,113	4A 5.75Acres X \$110@ = \$ 633
		2G1 5.00 Acres X \$ 65@ = \$ 325
		4G 12.00 Acres X \$ 30@ = \$ 360
		Site 1.00 Acre X \$1000@ = \$ 1,000
		<b>Total 60.00 Acres = \$ 13,556</b>

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

**IT IS SO ORDERED.**

Dated this 5th day of September, 1997.



Seal

*[Handwritten Signature]*  
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 Mark P. Reynolds, Chairman

*[Handwritten Signature: Janet L. Edwards]*  
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 Janet L. Edwards, Commissioner

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 Robert L. Hans, Commissioner