

BEFORE THE NEBRASKA TAX EQUALIZATION  
AND REVIEW COMMISSION

DAVID N. LUTTON,	)	
	)	
Appellant,	)	CASE NO. 00A-172
	)	
vs.	)	DOCKET ENTRY
	)	REVERSING THE DECISION
SAUNDERS COUNTY BOARD OF	)	OF THE COUNTY
EQUALIZATION,	)	
	)	
Appellee.	)	

The Nebraska Tax Equalization and Review Commission ("the Commission") called the above-captioned case for a hearing on the merits of the appeal in the City of Lincoln, Lancaster County, Nebraska, on the 27<sup>th</sup> day of November, 2001, pursuant to a Notice of Hearing issued the 17<sup>th</sup> day of November, 2001.

David N. Lutton ("the Taxpayer") appeared personally at the hearing. The Saunders County Board of Equalization appeared through Grant A. Porter, the Deputy Saunders County Attorney. During the hearing, the Commission took statutory 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 (2001 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 received, heard and considered the exhibits, evidence and argument. Thereafter it entered its Findings of Fact, Conclusions of Law, and a Final Order on the merits of the appeal on the record. Those matters, in substance, are set forth below:

I.  
**FINDINGS OF FACT**

From the record, the Commission finds and determines as follows:

A.  
**PROCEDURAL FINDINGS**

1. That the Taxpayer is the owner of record of certain agricultural real property located in Saunders County, Nebraska ("the subject property").
2. That the Saunders County Assessor ("the Assessor") proposed valuing the subject property in the amount of \$83,735 for purposes of taxation as of January 1, 2000 ("the assessment date"). (E1).
3. That Taxpayer timely filed a protest of the proposed valuation and requested that the subject property be valued in the amount of \$60,540. (E1).

4. That the protest alleged that the value of the improvement component of the subject property was zero. (E1).
5. That the County denied the protest. (E1).
6. That thereafter, the Taxpayer timely filed an appeal of the County's decision to the Commission. (Appeal Form).
7. That the assessed value of the land component (\$60,540) as of the assessment date is not at issue.

**B.**

**SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS**

1. That the subject property consists of an 40-acre tract of land which the Taxpayer acquired in approximately 1989. That the property included an old school house which had been converted into a 2-bedroom house.
2. That the Taxpayer had a tenant who occupied the improvements from 1993 until the Fall of 1999. That the tenant vacated the improvements since there was a hole in the roof and the structure was in disrepair.
3. That the Taxpayer gave the tenant the furnace and the hot water heater when the tenant vacated the property.
4. That the Taxpayer donated the structure to the Yutan Fire Department for a controlled burn in the Fall of 1999. That

the Yutan Fire Department did in fact destroy the structure in a controlled burn in the summer of 2000.

5. That the structure was uninhabitable since the Fall of 1999.
6. That the Property Record File for the subject property (Exhibit 2) does not demonstrate how the value of \$23,195 was determined.
7. That the protest was heard initially by a referee pursuant to Neb. Rev. Stat. §77-1502.01 (Reissue 1996). That a copy of the report from the referee to the County was not made a part of the record. That the Taxpayer was not provided with copy of that report.
8. That there is no evidence that the County Assessor or his or her deputy ever inspected the subject property.
9. That the Taxpayer testified that Saunders County has county wide zoning ordinances. That the Taxpayer further testified that pursuant to those zoning ordinances the structure was uninhabitable as of the assessment date.
10. That the County presented no evidence to rebut any of the evidence offered by the Taxpayer.
11. That the Taxpayer has adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the County.

12. That based on the entire record before it, the Commission finds and determines that the actual or fair market value of the improvement component of the subject property as of the assessment date was zero.
13. That the assessed value of the improvement component of the subject property for tax year 2000 as determined by the County is not supported by the evidence.
14. That therefore the decision of the County was both unreasonable and arbitrary.
15. That therefore the decision of the County must be vacated and reversed.

## II.

### CONCLUSIONS OF LAW

1. That the Commission has jurisdiction over the parties and the subject matter of this appeal.
2. That the Commission is required to affirm the decision of the County unless evidence is adduced establishing that the action of the County was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (2001 Supp.). The Nebraska Supreme Court, in considering similar language, has held 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." *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).

3. That the Court has also held that "In an appeal to the county board of equalization or to [the Tax Equalization and Review Commission] and from the [Commission] 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." *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).

4. That "It is the function of the county board of equalization to determine the actual value of locally assessed property for tax purposes. In carrying out this function, the county board must give effect to the constitutional requirement that taxes be levied uniformly and proportionately upon all taxable property in the county. Individual discrepancies and inequalities within the county must be corrected and equalized by the county board of equalization." *AT & T Information Systems, Inc. v. State Bd. of Equalization and Assessment*, 237 Neb. 591, 595, 467 N.W.2d 55, 58 (Neb. 1991).
5. That "An owner who is familiar with his property and knows its worth is permitted to testify as to its value." *U. S. Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).
6. That the Nebraska Supreme Court has determined that "(w)here the county assessor does not act upon his own information, or does not make a personal inspection of the property, any presumption as to the validity of the official assessment

does not obtain." *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 580, 144 N. W. 2d 161, 169 (1966).

7. That "Where a county assessor has not acted on his own information, and where it is arbitrarily determined without explanation of the methods used or the elements considered, there is no presumption that the valuation is correct, and such a valuation is not supported by competent evidence and is legally erroneous." *Leech, Inc. v. Bd. Of Equal.*, 176 Neb. 841, 846, 127 NW2d 917,921 (1964).

**III.  
ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:**

1. That the order of the Saunders County Board of Equalization setting the assessed value of the improvement component of the subject property for tax year 2000 is vacated and reversed.
2. That Taxpayer's agricultural real property legally described as the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2, Township 14, Range 9, consisting of approximately 40-acres, in Saunders County, Nebraska shall be valued as follows for tax year 2000:



Land	\$60,540
Improvements	\$ -0-
Total	\$60,540

3. That this decision, if no appeal is filed, shall be certified to the Saunders County Treasurer, and the Saunders County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (2001 Supp.).
4. That this decision shall only be applicable to tax year 2000.
5. That each party is to bear its own costs in this matter.

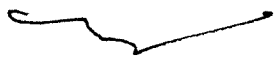
IT IS SO ORDERED.

I certify that Commissioner Hans made and entered the above and foregoing Findings and Orders in this appeal on the 27<sup>th</sup> day of November, 2001. The same were approved and confirmed by Commissioner Edwards and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (2001 Supp.).

Signed and sealed this 27<sup>th</sup> day of November, 2001.

SEAL



  
Mark P. Reynolds, Chairman