

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

DONALD SINDELAR,	)	
	)	
Appellant,	)	CASE NO. 98A-26
	)	
vs.	)	
	)	
DODGE COUNTY BOARD OF	)	<b>DOCKET ENTRY</b>
EQUALIZATION,	)	<b>AFFIRMING DECISION</b>
	)	<b>OF COUNTY</b>
	)	
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 Omaha, Douglas County, Nebraska, on the 2nd day of February, 1999, pursuant to a Notice of Hearing issued the 28<sup>th</sup> day of December, 1998.

Donald Sindelar ("Taxpayer") appeared personally at the hearing, and the Dodge County Board of Equalization appeared through the Dodge County Attorney and Deputy Dodge County Attorney. 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, entered its Findings of Fact, Conclusions of Law, and a Final Order on the merits of the appeal in this case, which were in

substance as follows:

## 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 Dodge County, Nebraska ("subject property").
2. That the Dodge County Assessing Official ("Assessor") proposed valuing the subject property for purposes of taxation in the amount of \$118,950 as of January 1, 1998, ("assessment date").
3. That the Taxpayer timely filed a protest of the proposed valuation, and requested that the subject property be valued at \$71,085. (E1).
4. That the protests alleged that the increase in the assessed value of the subject property over 1997 was excessive, and that the decision of the County to create market areas was unreasonable. (E1).
5. That the County denied the protest.
6. That thereafter, the Taxpayers timely filed an appeal of the County's decision to the Commission. (Appeal Form).

### B. SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. That the Taxpayer paid in excess of \$1,850 per acre for poorer quality ground adjoining the subject property in early 1996. His assessed value averages \$1,486 per acre for the subject property, which, at 100% of market value, results in an actual or fair market value of \$1,857 per acre.
2. That the Assessor is required by law to obey all rules and regulations, the instructions and orders, and the manuals of assessment of the Property Tax Administrator. Neb. Rev. Stat. §77-1311 (1998 Cum. Supp.). Neb. Rev. Stat. §77-425 (1998 Cum. Supp.) The Assessor may be removed from office for failure to follow and obey those rules, regulations, instructions, orders and manuals. Neb. Rev. Stat. §77-425 (1998 Cum. Supp.).
3. That the County Assessor is authorized by the *1998 Agricultural Land Valuation Manual* ("Manual") to create market areas within a county. *Manual*, pp. 3, 75, and 203.
4. That the County retained the services of a licensed Registered appraiser for the assessment of agricultural property within the County for tax year 1998.
5. That the uncontroverted evidence before the Commission establishes that sales of agricultural land varied among different parts of the County.
6. That the uncontroverted evidence before the Commission establishes that, in the County's expert's opinion, the creation of market areas was warranted and required by professionally accepted mass appraisal methods.
7. That the County is required to utilize professionally accepted mass appraisal methods in the valuation of real property. Neb. Rev. Stat. §77-112 (1998 Cum. Supp.).
8. That the County Assessor is required by law to utilize the Nebraska Agricultural Land

- Valuation Manual in the assessment of agricultural land. Neb. Rev. Stat. §77-425 (1998 Cum. Supp.).
9. That the Taxpayers adduced no evidence which would establish that the borders of the market areas as determined by Dodge County was unreasonable or arbitrary.
  10. That while the increase in the assessed value of the subject property from 1998 over 1997 may be considerable, the Taxpayers adduced no evidence which would establish that the value as determined by the County was in excess of 80% of actual or fair market value.
  11. That from the record before it, the Commission finds and determines that 80% of the actual or fair market value of the subject property as of January 1, 1998, was \$118,950.
  12. That therefore the assessed value of the subject property for tax year 1998 as determined by the County is supported by the evidence.
  13. That insufficient evidence has been adduced to establish that the decision of the County was unreasonable or arbitrary.
  14. That therefore the decision of the County must be affirmed.

#### 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 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.
3. 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).

4. That based on the record before the Commission, insufficient evidence has been adduced to establish that the action of the County in this case was unreasonable or arbitrary.
5. Further, that there is a presumption that the assessing official has performed his or her duties according to law. *See, State ex rel. Bee Building Co. v. Savage*, 65 Neb. 714 (1902); *Woods v. Lincoln Gas & Electric Co.*, 74 Neb. 526 (1905); *Brown v. Douglas Co.*, 98 Neb. 299 (1915); *Gamboni v. County of Otoe*, 159 Neb. 417 (1954); *Ahern v. Board of Equalization*, 160 Neb. 709 (1955); *Collier v. Logan County*, 169 Neb. 1 (1959); *Josten-Wilbert Vault Co. v. Board of Equalization*, 179 Neb. 415 (1965).
6. That as a matter of law there is no evidence which would establish that the decision of the County to rely on the recommendations of the County’s expert appraiser and the Assessor was unreasonable or arbitrary.
7. That the prior years assessment is not relevant to the subsequent year’s valuation. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N. W. 2d 451 (1944).
8. That as a matter of law the Taxpayers have NOT met their burden of proof as required by

*Kawasaki Motors v. Lancaster Cty. Bd. Of Equal.*, 7 Neb. App. 655 (1998).

- 9. That based on the record before the Commission, the Commission must, and hereby does, conclude as a matter of law that the decision of the Dodge County Board of Equalization which set the assessed value of the subject property for purposes of taxation at \$118,950 for tax year 1998 was neither unreasonable nor arbitrary.
- 10. That therefore the decision of the Dodge County Board of Equalization must be affirmed.

**ORDER**

- 1. That the order of the Dodge County Board of Equalization setting the assessed value of the subject property for tax year 1998 is affirmed.
- 2. That the Taxpayers' agricultural real property legally described as the W ½ SE ¼, consisting of approximately 80 acres in Section 29, Township 20, Range 5, shall be valued as follows for tax year 1998 as determined by the Dodge County Board of Equalization.

Land	\$118,950
Improvements	\$ 0
Total Value	\$118,950

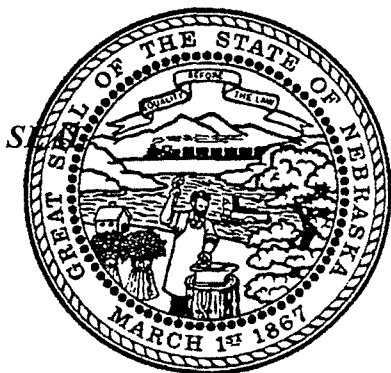
- 3. That this decision, if no appeal is filed, shall be certified to the Dodge County Treasurer, and the Dodge County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
- 4. That this decision shall only be applicable to tax year 1998.


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 2<sup>nd</sup> day of February, 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 9<sup>th</sup> day of February, 1999.



  
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*Mark P. Reynolds, Chairman*