

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

|                       |   |                  |
|-----------------------|---|------------------|
| PATRIOT COMPANY, INC. | ) |                  |
|                       | ) | CASE NO. 97R-448 |
| Appellant,            | ) |                  |
|                       | ) |                  |
| v.                    | ) | DOCKET ENTRY     |
|                       | ) |                  |
| DAKOTA COUNTY BOARD   | ) |                  |
| OF EQUALIZATION,      | ) |                  |
|                       | ) |                  |
| Appellee.             | ) |                  |

The Commission called the above-captioned case for hearing on the merits in the City of Dakota City, Dakota County, Nebraska, on the 30th day of October, 1997, pursuant to an Amended Notice of Hearing issued the 23<sup>rd</sup> day of October, 1997.

Appellant appeared personally through its President and Chief Executive Officer. Appellee appeared through the Dakota County Attorney. During the hearing, the Commission took judicial notice of certain information. The Commission, after receiving certain exhibits and hearing arguments, denied Appellant's request to admit Exhibit 2 into evidence. The decision was based on the fact that Appellant failed to comply with the Commission's Order that the Parties exchange all evidence at least seven (7) days prior to the hearing. Appellant took great exception to the decision, and a disturbance ensued. During the course of this disturbance, the Appellee summoned Sheriff's Deputies to the Hearing Room.

Neb. Rev. Stat. §77-5018 (Reissue 1996), as amended by 1997 Neb. Laws, L. B. 397 (1997 Session), 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, in compliance with this mandate, and as a

result of the disturbance, adopts these Findings and Orders in this case.

### FINDINGS OF FACT

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

- I. That the Appellant was afforded the opportunity to present evidence and argument.
- II. That the Appellant disrupted the proceedings before the Commission.
- III. That Appellant requested and was granted a recess.
- IV. That after the hearing was reconvened the Appellant was afforded the opportunity to assure the Commission that no further disruptions would occur.
- V. That Appellant's conduct made it clear that no such guarantee could be made, and that further disruptions were not only possible but likely.

### CONCLUSIONS OF LAW

- I. The Commission is obliged to provide every appellant with the opportunity to present evidence and argument in his or her behalf.

“If the taxpayer be given *an opportunity* to test the validity of the tax at any time before it is made final, whether the proceedings for review take place before a board having a quasi judicial character, or before a tribunal provided by the state for the purpose of determining such questions, due process of law is not denied. It was held by this court in *Pittsburgh, C. C. & St. L. R. Co. v. Backus*, 154 U.S. 421, 426, 38 L. E. 1031, 1036, 15 Sup. Ct. Rep. 1114, that a hearing before judgment, with *full opportunity* to present the evidence and the arguments which the party deems important, is all that can be adjudged vital.

*Hodge v. Muscatine County*, 196 U.S. 276, 282, 25 S. Ct. 237, 240 (1905). [Emphasis

added.]

- II. The opportunity which must be afforded to the appellant must be appropriate to the nature of the case. *Howard v. City of Lincoln*, 243 Neb. 5, 12, 497 N.W.2d 53, 58 (1993).
- III. That the Commission is authorized by Neb. Rev. Stat. §77-5018 (Reissue 1996) to “issue decisions and orders which are supported by the evidence and appropriate for resolving the matters in dispute.”
- IV. That nothing in the state constitution, state statutes, or rules and regulations of the Commission compels the Commission to allow or permit conduct which is so offensive and threatening as to require the assistance of law enforcement officers.
- V. That the Commission must, and hereby does, conclude as a matter of law that under the facts and circumstances set forth above, the Commission has afforded adequate and appropriate due process to the Appellant, and nothing further is required.
- VI. That the Commission must, and hereby does, conclude as a matter of law that an order of dismissal under these circumstances does not violate the due process rights of the Appellant.

**ORDER**

- I. That this case is dismissed with prejudice.
- II. That as a result of the order to dismiss, the order of the Dakota County Board of Equalization setting the assessed value of the subject property for tax year 1997 at \$149,757 stands as the final disposition of the case.

III. That Appellants' real property legally described as Lot 6, Florence Addition, South Sioux City, Dakota County, Nebraska, shall therefore be valued as follows for tax year 1997:

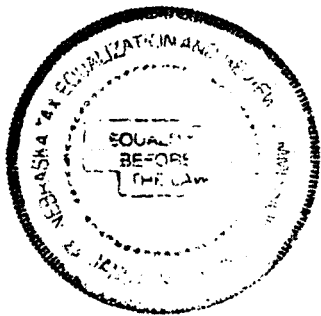
|              |           |
|--------------|-----------|
| Land         | \$19,069  |
| Improvements | \$131,688 |
| Total        | \$149,757 |

IV. That this decision, if no appeal is filed, shall be certified within thirty days to the Dakota County Treasurer, and the Dakota County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1997).


V. That each party is to bear its own costs in this matter

**IT IS SO ORDERED.**

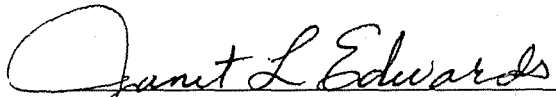
Dated this 4<sup>th</sup> day of November, 1997.



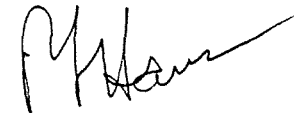
Seal

  
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Mark P. Reynolds, Chairman

  
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Janet L. Edwards, Commissioner

  
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Robert L. Hans, Commissioner