

RECEIVED

MAR 19 2001

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

SCHMID LAW LIBRARY UNL COLLEGE OF LAW

DALE E. SHAUL,)	CASE NO.	99A-36
)		99A-37
Appellant,)		99A-38
)		99A-39
vs.)		99A-40
)		
BANNER COUNTY BOARD OF EQUALIZATION,)	DOCKET ENTRY	
)	DISMISSING THE APPEAL AT THE	
Appellee.)	CLOSE OF THE TAXPAYER'S CASE	
)		

The Nebraska Tax Equalization and Review Commission ("Commission") called the above-captioned cases for a hearing on the merits of the appeals in the City of Sidney, Cheyenne County, Nebraska, on the 23rd day of August, 2000, pursuant to a Notice of Hearing issued the 14th day of March, 2000.

Dale E. Shaul ("the Taxpayer") appeared personally at the hearing, and the Banner County Board of Equalization appeared through Robert M. Brenner, the Banner 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:

**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 Banner County, Nebraska (“the subject properties”).
2. That the Banner County Assessor (“the Assessor”) proposed valuing the **land component only** of subject properties in the amounts shown below as of January 1, 1999 (“the assessment date”). (E1 - E5).
3. That Taxpayer timely filed a protest of the proposed valuation and requested that the **land component only** of the subject properties be valued in the amounts shown below. (E1 - E5).
4. That the protests alleged that the properties that a portion of each parcel was improperly classified as “Grass” when is should have been classified as “Waste.” (E1 - E5).
5. That the County denied the protests. (E1 - E5).

Case #	Exhibit	Assessor	Taxpayer	CBE*	Acres
99A-36	1, 19	\$34,380	\$34,010	\$34,380	322.73
99A-37	2, 20	\$32,360	\$30,965	\$32,360	320.00
99A-38	3, 21	\$22,165	\$18,450	\$22,165	278.47
99A-39	4, 22	\$3,100	\$ 875	\$3,100	41.32
99A-40	5, 23	\$7,340	\$ 5,690	\$7,340	79.59
Total		\$99,345	\$89,990	\$99,345	1,042.11

* County Board of Equalization

6. That thereafter, the Taxpayer timely filed an appeal of the County's decision to the Commission. (Appeal Form).
7. That the five appeals were consolidated for purposes of hearing.
8. That the only issue before the Commission is the valuation of the land component as of the assessment date.
9. That at the close of the Taxpayer's case, the County moved to dismiss the case for failure to prove a *prima facie* case. Specifically, that Taxpayer failed to adduce any evidence of actual or fair market of the subject property.

B.
SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. That the Taxpayer offered no evidence of actual or fair market value for the subject properties.
2. That since no evidence has been adduced to show that the valuation decision of the County was unreasonable or arbitrary, the Taxpayer cannot overcome the presumption afforded the County in Neb. Rev. Stat. §77-1511 (Reissue 1996).

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 by Neb. Rev. Stat. §77-5016(7) (1999 Supp.) 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 . . . In an appeal to the [Commission from the County Board of Equalization] . . . 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.” *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).
4. 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).

5. That the appraisal of real estate is not an exact science. *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N. W. 2d 872, 874 (1977).
6. 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). *Affiliated Foods Coop v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N. W. 2d 201,206 (1988).
7. That as to subject matter jurisdiction the issue is "... whether the question as presented to the Board of Equalization and the question as presented to the Commission were sufficiently related in content and context to be deemed the same question at both levels." *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 505, 583 N. W. 2D 353, 357(Neb. App. 1998).
8. That "The statute 'restricts a taxpayer's appeal to a consideration of questions raised before the board of equalization, and the court is without power to adjudicate any other factual question or issue in the taxpayer's appeal.' " *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 504 - 505, 583 N. W. 2D 353, 356 - 357 (1998). (Citations omitted).
9. That the Commission "... is without power to adjudicate any issue . . . that was not raised before the board." *Gordman Properties v. Hall Cty. Bd. of Equalization*, 225 Neb. 169, 403 N.W.2d 366 (1987).
10. That there are two reasons for the rule not allowing the Commission "... to litigate issues not raised before the Board. One, '[the] board of equalization is entitled to a specific complaint, and should have an opportunity to pass on the question. . . before the public revenues become involved in protracted or vexatious litigation.' And two, so the

protestor cannot present a different but meritorious one before the board and thus obtain a reversal of the board.” *Gordman Properties v. Hall Cty. Bd. of Equalization*, 225 Neb. 169, 174 - 175, 403 N.W.2d 366, 370 (1987).

11. 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.”
12. That given this mandate, the Commission must grant the County’s Motion to Dismiss as a matter of law.

**III.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the orders of the Banner County Board of Equalization setting the assessed values of the subject properties for tax year 1999 is affirmed.
2. That Taxpayer’s agricultural real property shall be valued for purposes of taxation as follows as determined by the Banner County Board of Equalization for tax year 1999:

- a. The E ½ of Section 5, Township 19, Range 54, consisting of approximately 322.73 acres, in Banner County, Nebraska, shall be valued as follows for tax year 1999:

Land	\$34,380
Improvements	\$ 1,155
Total	\$35,535

- b. The N ½ of Section 9, Township 19, Range 54, consisting of approximately 320.00 acres, in Banner County, Nebraska, shall be valued as follows for tax year 1999:

Land	\$32,360
Improvements	\$ -0-
Total	\$32,360

- c. The W ½ W ½; and the SE 1/4 SW 1/4 ; and the S ½ SE 1/4 of Section 4, Township 19, Range 54, consisting of approximately 22,165 acres, in Banner County, Nebraska, shall be valued as follows for tax year 1999:

Land	\$22,165
Improvements	\$ -0-
Total	\$22,165

- d. The SW 1/4 SW 1/4 of Section 33, Township 20, Range 54, consisting of approximately 41.32 acres, in Banner County, Nebraska, shall be valued as follows for tax year 1999:

Land	\$3,100
Improvements	\$ -0-
Total	\$3,100

e. The S ½ SW 1/4, consisting of approximately 79.59 acres, in Banner County, Nebraska, shall be valued as follows for tax year 1999:

Land	\$7,340
Improvements	\$ -0-
Total	\$7,340

3. That this decision, if no appeal is filed, shall be certified to the Banner County Treasurer, and the Banner County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
4. That this decision shall only be applicable to tax year 1999.
5. That each party is to bear its own costs in this matter.

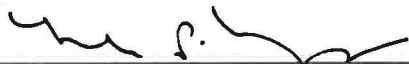
IT IS SO ORDERED.

I certify that Commissioner Hans made and entered the above and foregoing Findings and Orders in this appeal on the 23rd day of August, 2000. Commissioner Edwards dissented. The Chair approved and confirmed the Findings and Orders. That since a quorum of the Commission approved and confirmed the Findings and Order, those Findings and Order are deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5). (1998 Cum. Supp.)

Signed and sealed this 28th day of August, 2000.

SEAL





Mark P. Reynolds, Chairman