

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

ASH GROVE CEMENT CO.,

CASE NO. 98C-63

Appellant,

vs.

CASS COUNTY BOARD OF
EQUALIZATION,

Appellee.

**DOCKET ENTRY
DISMISSING APPEAL AT
CLOSE OF APPELLANT'S CASE**

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 Lincoln, Lancaster County, Nebraska, on the 18th day of February, 1999, pursuant to a Notice of Hearing issued the 15th day of January, 1998.

Ash Grove Cement Co. ("Taxpayer") appeared through its Production Manager and through counsel at the hearing, and the Cass County Board of Equalization appeared through the Cass County Attorney and the Deputy Cass 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

A. PROCEDURAL FINDINGS

1. That Taxpayer is the owner of record of certain real property as legally described in the Appeal Form ("subject property").
2. That the Cass County Assessor ("Assessor") proposed valuing the mineral interests, land and improvements of the subject properties as of January 1, 1998 ("assessment date").
3. That Taxpayer timely filed a protest of the proposed valuation.
4. That the basis of the protests was the allegation that the "Property is valued in excess of actual value and is not fairly and impartially equalized." (Form 422)
5. That the County denied the protest.
6. That thereafter, Taxpayer timely filed an appeal of the County's decision to the Commission.
7. That at the close of the Taxpayer's case the County moved to dismiss the appeal.

B. SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. That the County retained the services of an appraiser to assist the Assessor in the valuation of the mineral interests. (E27).
2. That the County has not compelled the owners of the severed mineral interests in the consolidated cases to produce the deeds, leases, or income and expense information as authorized under the provisions of Neb. Rev. Stat. §77-1502.01 (Reissue 1996).

3. That the mineral interests have some value as demonstrated by the sale and purchase of mineral interests reported to the Appraiser for the County, which are documented in Exhibit 27.
4. That mineral interests are real property. Neb. Rev. Stat. §77-103(5) (Reissue 1996).
5. That the Assessor is required by law to assess all real property as of the assessment date. Neb. Rev. Stat. §77-201 (Reissue 1996); Neb. Rev. Stat. §77-1301(1) (Reissue 1996); and Neb. Rev. Stat. §77-1311 (Reissue 1996).
6. That if the Assessor fails to comply with state law, he or she is subject to removal from office. Neb. Rev. Stat. §77-378 (Reissue 1996).
7. That the Assessor, in the valuation of improvements, may utilize any of three different professionally accepted mass appraisal methods. That the Assessor, in the valuation of land, may utilize any of six different professionally accepted mass appraisal methods. That the Assessor, in the valuation of mineral interests, may utilize either of two professionally accepted mass appraisal methods. That therefore the various components of real property may be valued separately under professionally accepted mass appraisal practices. *Property Assessment Valuation, pp. 42 and 69.*
8. That the Assessor is required by law to utilize professionally accepted mass appraisal practices in the assessment of real property. Neb. Rev. Stat. §77-112 (Reissue 1996).
9. That "In the evaluation of real property for tax purposes, where buildings and improvements are taxable as part of the real estate, the critical issue is the actual value of the entire property, not the proportion of that value which is allocated to the land or to the buildings and improvements by the appraiser." *Bumgarner v. Valley County*, 208 Neb.

361, 366, 303 N. W. 2d 307, 310 (1981).

10. That from the record before the Commission, Taxpayer has adduced no evidence of the actual or fair market value of the land, improvements, and mineral interests of the subject properties.
11. Further that from the record before the Commission to this point in the proceedings, there is no evidence of the actual or fair market value of the "comparable" properties.
12. That from the record before the Commission, there is no evidence which would establish that the actual or fair market value of the subject property, including land, improvements, and mineral interests, as determined by the County, taken as a whole, exceeds market value.
13. That although there is some evidence which could establish that the valuation of mineral interests within Cass County for tax year 1998 was the result of a ". . . deliberate and intentional discrimination systematically applied. . ." See, e. g., *Kearney Convention Center v. Buffalo Cty. Bd. Of Equal.*, 216 Neb. 292, 344 N. W. 2d 620 (1984), the Commission has no basis upon which to equalize the assessed value of the subject property since there is no evidence of actual or fair market value from which the level of assessment can be determined.
14. That in fact the Appraiser, conducted interviews with a number of property owners in order to determine the number and extent of properties whose values were affected by mineral interests. (E27). That the Appraiser originally considered the value of the mineral interests of approximately 84 parcels of property as provided by the Assessor. That the Appraiser indicated that the actual or fair market value of approximately 102

parcels might be affected by mineral deposits. That he later determined that 62 of these parcels he had identified had mineral interests with no value. (E27).

15. That the Appraiser supported his opinion of value for the mineral interests at issue using 2 professionally accepted mass appraisal approaches to value. (E12).
16. That from the record before the Commission, the market value of the mineral interests component of the assessed value of the subject property is that amount determined by the County.
17. That from the record before the Commission Taxpayers have presented no evidence which would establish that the decision of the County was unreasonable or arbitrary.
18. That therefore the Motion to Dismiss must be granted.

CONCLUSIONS OF LAW

1. 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. Neb. Rev. Stat. §77-1511 (Reissue 1996). The Nebraska Court of Appeals, in interpreting this statute, 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.” *Kawasaki Motors v. Lancaster Cty. Bd. Of Equal.*, 7 Neb. App. 655 (1998).

2. That in order to demonstrate a lack of equalization, the Taxpayer must adduce evidence of the actual or fair market value of the subject property, the assessed value of the subject property, the actual or fair market value of the “comparable” properties, and the assessed value of the comparable properties. *See, e. g., Kearney Convention Center v. Buffalo Cty. Bd. Of Equal.*, 216 Neb. 292, 344 N. W. 2d 620 (1984).
3. That the Taxpayer, in order to overcome the presumption that the property is valued in excess of actual or fair market value, must adduce evidence of actual value of its property in order to successfully claim that the property is overvalued. *Lincoln Telephone and Telegraph v. County Board of Equalization of York County*, 209 Neb. 465, 308 N. W. 2d 515 (1981).
4. 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.”
5. That in the absence of any evidence of actual or fair market value of the Ash Grove Cement Co. properties, and given the mandate of *Bottorf v. Clay County*, the Commission must grant the County’s Motion to Dismiss as a matter of law.
6. 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).

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

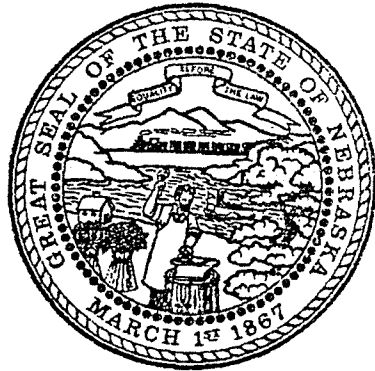
1. That this Appeal be, and it hereby is, dismissed with prejudice.
2. That the Taxpayer's real property legally described as the NE $\frac{1}{4}$, EXC RR AND TL 23, 24, 25 W $\frac{1}{2}$ NW $\frac{1}{4}$ E1/2 NW 1/4, NW $\frac{1}{4}$ SW 1/4, Lot 12, 18, 19 Exc. RR SW $\frac{1}{4}$ Section 34, Township 11, Range 11, located in Cass County, Nebraska, also known as Parcel Number 130127116, and also known in the records of the Cass County Assessors Office as Parcel 3271-34-0-00000-000-0006, shall therefore be valued as determined by the Cass County Board of Equalization for tax year 1998.
3. That this decision, if no appeal is filed, shall be certified to the Cass County Treasurer, and the Cass 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 18th 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 18th day of March, 1999.

SEAL



A handwritten signature in black ink, appearing to be "Mark P. Reynolds", is written above a horizontal line.

Mark P. Reynolds, Chairman