

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

DALE W. SHELDON and)	
MILDRED L. SHELDON,)	CASE NO. 98A-72
)	98A-73
Appellants,)	98A-74
)	98A-75
vs.)	
)	ORDER DISMISSING
DAWES COUNTY BOARD OF)	APPEALS FOR FAILURE TO
EQUALIZATION,)	OVERCOME STATUTORY
)	PRESUMPTION
Appellee.)	

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 Chadron, Dawes County, Nebraska, on the 15th day of September, 1999, pursuant to a Notice of Hearing issued the 21st day of July, 1999.

Dale W. Sheldon and Mildred L. Sheldon ("Taxpayers") appeared personally at the hearing, and the Dawes County Board of Equalization ("County") appeared through Dennis D. King, Special Appointed Counsel. 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, found and determined as follows:

FINDINGS OF FACT

1. That the Taxpayers are the owners of record of certain agricultural real properties as described in the petition ("subject properties").
2. That the Dawes County Assessor ("Assessor") proposed valuing the subject properties for purposes of taxation for tax year 1998. (E1; E2; E3; E4).
3. That Taxpayers timely protested those determinations of value to the Dawes County Board of Equalization ("County"). (E1; E2; E3; E4).
4. That the County denied the protests. (E1; E2; E3; E4).
5. That Taxpayers timely filed an appeal of those decisions to the Commission.
6. That at the close of the Taxpayers' case, the County moved to dismiss the case for failure to make a *prima facie* case. Specifically, that Taxpayers failed to adduce any evidence of actual or fair market of the subject property.
7. That from the entire record, the Commission finds and determines that the Taxpayer has not adduced any evidence of actual or fair market value of the subject property.
8. That there is therefore, no evidence upon which the Commission could conclude that the decision of the County was unreasonable or arbitrary.

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.

2. 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).
3. That since no evidence has been adduced to show that the decisions of the County were unreasonable or arbitrary, the Taxpayer cannot overcome the presumption afforded the County in Neb. Rev. Stat. §77-1511 (Reissue 1996).
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." Given this mandate, the Commission must grant the County's Motion to Dismiss as a matter of law.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. That these appeals are dismissed with prejudice.

2. That in Case Number 98A-72, Taxpayers' agricultural real property, legally described as the SW $\frac{1}{4}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, of Section 2, Township 30, Range 51, consisting of approximately 60 acres, in Dawes County, Nebraska, shall be valued for tax year 1998, as determined by the Dawes County Board of Equalization, as follows:

Land	\$12,500
Improvements	\$ -0-
Total	\$12,500

3. That in Case Number 98A-73, Taxpayers' agricultural real property, legally described as the S $\frac{1}{2}$ SE $\frac{1}{4}$, of Section 3 Township 30, Range 51, consisting of approximately 80 acres, in Dawes County, Nebraska, shall be valued for tax year 1998, as determined by the Dawes County Board of Equalization, as follows:

Land	\$17,260
Improvements	\$ -0-
Total	\$17,260

4. That in Case Number 98A-74, Taxpayers' agricultural real property, legally described as the N $\frac{1}{2}$ NE $\frac{1}{4}$, of Section 10, Township 30, Range 51, consisting of approximately 80 acres, in Dawes County, Nebraska, shall be valued for tax year 1998, as determined by the Dawes County Board of Equalization, as follows:

Land	\$17,060
Improvements	\$28,870
Total	\$45,930

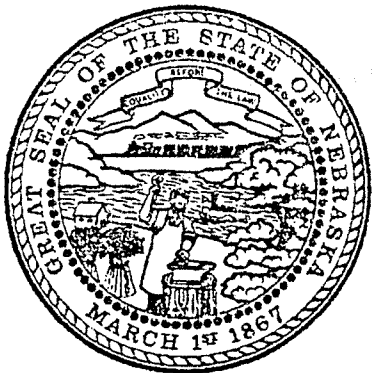
5. That in Case Number 98A-75, Taxpayers' agricultural real property, legally described as the NW ¼ NW ¼; W ½ NE ¼ NW ¼, of Section 11, Township 30, Range 51, consisting of approximately 60 acres, in Dawes County, Nebraska, shall be valued for tax year 1998, as determined by the Dawes County Board of Equalization, as follows:

Land	\$10,210
Improvements	\$ -0-
Total	\$10,210


6. That this decision, if no appeal is filed, shall be certified to the Dawes County Treasurer, and the Dawes County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
7. That this decision shall only be applicable to tax year 1998.
8. That each party is to bear its own costs in this matter.

IT IS SO ORDERED.

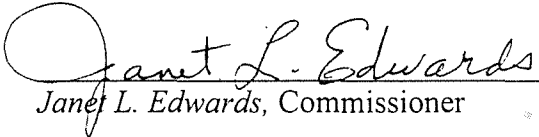
Signed and sealed this 12th day of November, 1999.



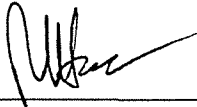
SEAL



Mark P. Reynolds, Chairman



Janet L. Edwards, Commissioner



Robert L. Hans, Commissioner