

BEFORE THE NEBRASKA TAX EQUALIZATION  
AND REVIEW COMMISSION

DENNIS D. EINSPAHR,	)	
	)	
Appellant,	)	CASE NO. 00R-31
	)	
vs.	)	
	)	ORDER DISMISSING APPEAL
DODGE COUNTY BOARD OF	)	FOR FAILURE TO APPEAR
EQUALIZATION,	)	AND FOR WANT OF
	)	PROSECUTION
Appellee.	)	

The Nebraska Tax Equalization and Review Commission ("the 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 14<sup>th</sup> day of November, 2001, pursuant to an Amended Notice of Hearing issued the 23<sup>rd</sup> day of October, 2001.

Dennis D. Einspahr ("the Taxpayer") failed to appear at the hearing. The Dodge County Board of Equalization ("the County") appeared through counsel, Cynthia L. Schuele, the Deputy Dodge County Attorney. During the hearing, the Commission took statutory notice of certain information. Each of the Parties was afforded the opportunity to present evidence and argument. The Commission also received all evidence which had been provided by the Parties in accordance with the provisions of the Order for Hearing and Notice of Hearing.

Neb. Rev. Stat. §77-5018 (2000 Cum. Supp., as amended by 2001 Neb. Laws, L.B. 465, §8), 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 that mandate, adopts the following as its final decision and order in this case:

I.  
FINDINGS OF FACT

From the pleadings and the evidence contained in the record before it, the Commission finds and determines as follows:

1. That Taxpayer is the owner of record of certain real property as legally described in the appeal ("the subject property").
2. That the County Assessor proposed valuing the subject property for purposes of taxation for tax year 2000 in the amount of \$42,355. (E1).
3. That Taxpayer timely protested that determination of value to the Dodge County Board of Equalization ("the County") and requested that the assessed value be reduced. (E1).
4. That the County denied the protest and increased the value of the land component of the subject property. The County

therefore set the assessed value of the subject property in the amount of \$49,400 as of the assessment date. (E1).

5. That Taxpayer timely filed an appeal of that decision to the Commission.
6. That County was served with a Notice in Lieu of Summons, and duly answered that Summons.
7. That an Order for Hearing was issued in this case on the 8<sup>th</sup> day of August, 2001.
8. That an Affidavit of Service which appears in the records of the Commission establishes that a copy of the Order for Hearing was served on both Parties.
9. That the Order for Hearing required the Parties to exchange copies of all documentary, photographic, or other evidence, and to serve a copy of those exhibits on the Commission.
10. That the Taxpayer did not serve copies of any exhibits either on the County or on the Commission.
11. That an Amended Notice of Hearing was issued in this case on the 23<sup>rd</sup> day of October, 2001, which set the case for a hearing on the merits of the appeal for the 14<sup>th</sup> day of November, 2001.

12. That an Affidavit of Service which appears in the records of the Commission establishes that a copy of the Notice of Hearing was served on all parties.
13. That Chapter 4, Title 442, Section 011.01 requires that, if the Taxpayer is a natural person, that person must appear at the hearing.
14. That the Notice of Hearing (Paragraph 7) states that if the Taxpayer fails to appear at the hearing the Commission may enter an order dismissing the case.
15. That the Commission called the above-captioned case for hearing on the merits of the appeal in the City of Lincoln, Lancaster County, Nebraska, on the 14<sup>th</sup> day of November, 2001.
16. That no one appeared on behalf of the Taxpayer at the hearing.
17. That County appeared at the hearing through counsel, with its witnesses, and was prepared to defend the decision of the Dodge County Board of Equalization.
18. That the County moved to dismiss this appeal for failure to appear and for want of prosecution.

19. That each of the parties was afforded an opportunity to present evidence and argument as required by Neb. Rev. Stat. §77-5015 (2000 Cum. Supp.).
20. That each of the parties was afforded an opportunity to cross-examine the witnesses as required by Neb. Rev. Stat. §77-5016(4) (2000 Cum. Supp., as amended by 2001 Neb. Laws, L.B. 419, §1, as amended by 2001 Neb. Laws, L.B. 170, §22, and as amended by 2001 Neb. Laws, L.B. 465, §7).
21. That from the record before the Commission, the Taxpayer has failed, neglected and refused to comply with the Order for Hearing, the Notice of Hearing, and with substantive provisions of Title 442.
22. That therefore this appeal should be dismissed for failure to appear and for want of prosecution.
23. That since the filing deadline for appeals to the Commission for tax year 2000, has passed, the appeal should be dismissed with prejudice.

II.  
CONCLUSIONS OF LAW

That the Commission must, and hereby does, conclude as a matter of law that Taxpayer's failure to appear in violation of

Title 442, Nebraska Administrative Code, and that for want of prosecution, this appeal should be dismissed with prejudice.

III.  
ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That this appeal be, and hereby is, ordered dismissed with prejudice.
2. That Taxpayer's property legally described as Fairlawn Lots 4 and 5, Block 6, in the City of Fremont, Dodge County, Nebraska, shall be valued as follows for tax year 2000, as determined by the Dodge County Board of Equalization:

Land	\$49,000
Improvements	\$ 400
Total	\$49,400
3. That this decision, if no appeal is filed, shall be certified to the Dodge County Treasurer, and the Dodge County State Assessing Official, pursuant to Neb. Rev. Stat. §77-5018(2000 Cum. Supp., as amended by 2001 Neb. Laws, L.B. 465, §8).
4. That each party is to bear its own costs in this matter.

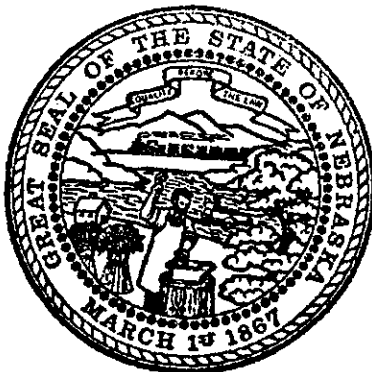
5. That this decision shall only be applicable to tax year 2000.


IT IS SO ORDERED.

I certify that Commissioner Hans made and entered the above and foregoing Findings and Orders in this appeal on the 14<sup>th</sup> day of November, 2001. The same were approved and confirmed by Commissioner Edwards and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (2000 Cum. Supp., as amended by 2001 Neb. Laws, L.B. 465, §5).

Signed and sealed this 14<sup>th</sup> day of November, 2001.

SEAL



  
Mark P. Reynolds, Chairman