

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

JOANN C. KUHNS LIVING TRUST,	)	CASE NO.	98A-28	98A-33
	)		98A-29	98A-34
Appellant,	)		98A-30	98A-35
	)		98A-31	98A-36
vs.	)		98A-32	
)			
SEWARD COUNTY BOARD OF	)	FINDINGS AND ORDERS		
EQUALIZATION,)			
)			
Appellee.)			
)			

Filed August 2, 1999

Appearances:

For the Appellant: Eldon E. Kuhns, Trustee
3117 Ramada Drive
Billings, MT 59102

For the Appellee: Marilyn Hladky
Seward County Assessor
529 Seward Street
Seward, NE 68434

Before: Commissioners Edwards, Hans and Reynolds

Reynolds, Chairman, for the Commission:

SUMMARY OF DECISION

The Commission affirms the decision of the Seward County Board of Equalization which granted Taxpayer's protest in part, and denies Taxpayer's request for a reduction in the assessed value of the subject property.

NATURE OF THE CASE

Joann C. Kuhns Living Trust ("Taxpayer") owns certain agricultural real property located in Seward County, Nebraska. Taxpayer filed protests with the Seward County Board of Equalization ("County") essentially alleging that the property was overvalued. By way of relief, Taxpayer requested that the proposed 1998 valuations be reduced. The County reduced the proposed value of one parcel in part, and denied relief in the other protests, from which decision Taxpayer appeals.

EVIDENCE BEFORE THE COMMISSION

Taxpayer's nine appeals were consolidated for purposes of hearing. Those appeals may be found at Case Numbers 98A-28; 98A-29; 98A-30; 98A-31; 98A-32; 98A-33; 98A-34; 98A-35; and 98A-36. Judicial notice was taken, without objection, of the pleadings in each of the case files, as well as the following information: the *1998 Nebraska Assessor's Reference Manuals*, Volumes 1 and 2; the *1998 Nebraska Agricultural and Horticultural Land Valuation Manual*; the Nebraska Constitution; the Nebraska State Statutes; *Title 442, Nebraska Administrative Code* (the Tax Equalization and Review Commission's Rules and Regulations); three standard reference works published by the International Association of Assessing Officers: *Property Assessment Valuation, Second Edition* (1996); *Property Appraisal and Assessment Administration* (1990); and *Glossary for Property Appraisal and Assessment* (1998); the Property Tax Division of the Department of Revenue's 1998 Ratios and Measures of Central Tendency which are published pursuant to Neb. Rev. Stat. §77-1327(6); the 1998 County Profiles for Seward County; the 1998 Equalization Proceedings of the Tax Equalization and Review

Commission; the *Uniform Standards of Professional Appraisal Practices*, 1998 Edition; the Soil Survey for Seward County; *Title 298, Nebraska Administrative Code* (the Nebraska Real Estate Appraiser Board's Rules and Regulations); the Nebraska Real Estate Appraiser Board Certification Requirements; and the Nebraska Real Estate Appraiser Board Education Core Curriculum.

During the proceedings, the Taxpayer also requested that the Commission take notice of the Commission proceedings regarding the 1997 appeals filed by Taxpayer (Case Numbers 97R-293 through and including 97R-303). The Commission took notice of those proceedings over the County's objection. The Commission also received certain exhibits and testimony during the course of the hearing.

ANALYSIS

Neb. Rev. Stat. §77-1502 (Reissue 1996) requires a taxpayer to identify the issues to be presented to the County Board of Equalization. The Commission's jurisdiction is limited to those issues presented to the County Board of Equalization. Neb. Rev. Stat. §77-1511 (Reissue 1996). The issues before the Commission are, therefore, Taxpayer's allegations that:

"In determining the value of the property the County Assessor:

- (1) was arbitrary
- (2) Did not consider all factors required by law, rules and regulations to determine the value of the property
- (3) Accepted without verification, information furnished by other agencies and entities
- (4) Have (sic) not made an on site visits (sic) and valuations in recent years

- (5) Overvalued the property in comparison to sales in the area of the subject property
- (6) Erroneously classified dry land as irrigated land
- (7) Erroneously classified waste and grassland as farm land
- (8) Was inconsistent in classifying the subject property with comparable property in the area
- (9) Did not give adequate consideration to the location of the property and sales in the area.”

(E1:2-3).

Although Taxpayer has alleged that these nine contentions form the basis of its appeal, the substance of Taxpayer’s complaint is that its land its classified as “irrigated,” when it fact it is “dryland.” This contention also formed the basis of Taxpayer’s 1997 appeal, which was appealed to the Nebraska Court of Appeals. That Court affirmed the decision of the Commission in a case not designated for publication found at Court of Appeals Case Number 98A-735 through 98A-745 (1998).

FINDINGS OF FACT

The Commission, in determining cases, is bound to consider only that evidence which has been made a part of the record before it. No other information or evidence may be considered. Neb. Rev. Stat. §77-5016 (3) (Reissue 1996). The Commission may, however, evaluate the evidence presented utilizing its experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016 (5) (Reissue 1996).

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

**A.
PROCEDURAL FINDINGS**

1. That Taxpayer is the owner of record of certain agricultural land located in Seward County, Nebraska ("subject property").
2. That the Seward County Assessor ("Assessor") proposed valuing the subject property for purposes of taxation in the amounts shown below as of January 1, 1998 ("assessment date"). Taxpayer's requested value and the final decision of the County is also shown.

Case #	Legal Description	Proposed Value	Requested	Final
98A-28	SW ¼ 18-9-3	\$220,138	\$119,050	\$216,226
98A-29	S ½ NE ¼ 18-9-3	\$96,282	\$50,360	\$96,282
98A-30	W ½ SE ¼ 5-9-3	\$105,890	\$88,500	\$105,890
98A-31	NW¼ NW ¼ 20-9-3	\$45,418	\$37,900	\$45,418
98A-32	N ½ SE ¼ 18-9-3	\$117,619	\$98,350	\$117,619
98A-33	E ½ NW ¼ & SW ¼ 18-9-3	\$121,281	\$101,280	\$121,281
98A-34	NE ¼ 13-9-2	\$220,645	\$121,200	\$220,645
98A-35	N ½ NW ¼ 13-9-2	\$114,296	\$62,600	\$114,296
98A-36	S ½ NW ¼ & PT . . . 13-9-2	\$157,276	\$110,888	\$157,276

3. That Taxpayer timely filed a protest of the proposed valuation, and requested that the subject property be valued as shown above. (E1 - 9).
4. That the County granted the protest in part as to Case Number 98A-28, but denied the other protests filed by Taxpayer.

- 5. That thereafter, the Taxpayer timely filed an appeal of the County's decision to the Commission. (Appeal Form).

**B.
SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS**

- 1. That Taxpayer adduced no evidence of actual or fair market value of any of the subject properties.
- 2. That Taxpayer offered information regarding the sale of six "dryland" parcels between March of 1995 and March of 1997 as evidence of the value of properties "comparable" to the subject property. (E10).
- 3. That Taxpayer alleges the following information regarding sales of dry and grass land in Seward County (arrayed in date of sale order) supports its contention that the property is overvalued:

Partial Legal	Date	Sales Price	# of Acres	Avg \$/Acre	Exhibit #:Page
27-9-3	3/95	\$175,000	159	\$1100	E12:1
28-10-3	5/95	\$132,000	160	\$825	E14:1
12-9-2	10/95	\$200,000	160	\$1250	E15:1
24-9-3	1/96	\$80,900	117.71	\$687	E11:2
29-9-3	1/97	\$108,596	116.59	\$931	E13:1
6-9-2	3/97	\$60,000	69.33	\$865	E16:1

- 4. That Taxpayer's dryland "comparable" sale in Section 27-9-3 contains 147.75 acres of dryland, 7.25 acres of shelterbelt, and 4 acres of roads. (E12:2).
- 5. That Taxpayer's dryland "comparable" sale in Section 28-10-3 contains 132 acres of dryland, 24 acres of grassland, and 4 acres of roads. (E14:2).

6. That Taxpayer's dryland "comparable" sale in Section 12-9-2 contains 149.55 acres of dryland, 4.45 acres of grassland, and 6 acres of roads. (E15:2).
7. That Taxpayer's dryland "comparable" sale in Section 24-9-3 contains 88.71 acres of dryland, 23 acres of grassland, 5 acres of waste, and 1 acre of roads. (E11:2). That the property also has a 1 acre home site, and \$15,106 worth of improvements. (E11:1 - 2).
8. That Taxpayer's dryland "comparable" sale in Section 6-9-2 has 49.85 acres of dryland, 16.14 acres of grassland, and 2.34 acres of roads. (E16:2).
9. That the "median" is "a measure of central tendency. The value of the middle item in an uneven number of items arranged or arrayed according to size; the arithmetic average of the two central items in an even number of items in an even number of items similarly arranged; a positional average that is not affected by the size of extreme values."

Glossary for Property Appraisal and Assessment, p. 86.

10. That the median value of the average price per acre column is \$898 per acre.
11. That majority land use of Taxpayer's agricultural land is "irrigated." That therefore the "comparables" presented are not relevant in determining actual or market value of Taxpayer's agricultural property.
12. That Taxpayer alleges the following information regarding sales of irrigated land in Seward County (arrayed in date of sale order) supports its contention that the property is overvalued.

Partial Legal	Date of Sale	Sales Price	# of Acres	Avg \$/Acre	Exhibit/Page
11-10-2	3/95	\$287,000	151.38	\$1,896	E21:1
19-9-3	10/96	\$130,000	75.39	\$1,724	E18:1
8-9-3	5/97	\$52,904	47.38	\$1,116	E19:1
27-9-3	4/98	\$257,500	154.87	\$1,663	E20:2

13. That the median value of this array is \$1,700 per acre.
14. That Taxpayer's "comparable" sale in Section 12-10-2 contains 113.6 acres of irrigated land, 29.9 acres of dryland, 7.5 acres of grassland, 5 acres of shelterbelt, 4 acres of roads. (E22:2).
15. That the acre counts for each of the sales is shown below:
16. That Taxpayer's "comparables" consist of the following:

Legal	Irr. Acre	Dry	Grass	Shelter	Waste	Road	Total
12-10-2	113.6	29.9	7.5	5.0	-0-	4.0	160
11-10-2	146.21	-0-	-0-	-0-	2.0	3.17	151.38
19-9-3	62.6	10.78	-0-	-0-	-0-	2.01	75.39
8-9-3	37.20	2.5	7.68	-0-	-0-	-0-	47.38*
27-9-3	113.0	27.0	15.0	-0-	-0-	3.76	154.87

*A house is also present on the property.

17. That the median assessed value per acre of Taxpayer's land is \$1459, as shown below:

Case #	Legal Description	Assessed Value	Acres	Assessed/Acre
98A-28	SW ¼ 18-9-3	\$216,226	148.81	\$1453
98A-29	S ½ NE ¼ 18-9-3	\$96,282	62.95	\$1529
98A-30	W ½ SE ¼ 5-9-3	\$105,890	77.15	\$1372
98A-31	NW¼ NW ¼ 20-9-3	\$45,418	34.89	\$1302
98A-32	N ½ SE ¼ 18-9-3	\$117,619	77.84	\$1511
98A-33	E ½ NW ¼ & SW ¼ 18-9-3	\$121,281	82.75	\$1465
98A-34	NE ¼ 13-9-2	\$220,645	151.52	\$1456
98A-36	S ½ NW ¼ & PT . . . 13-9-2	\$157,276	81.66	\$1926

18. That the median "market value" of Taxpayer's parcels, calculated at 80% of median assessed value, is \$1,824. ($\$1,459/80\% = \$1,824$).

19. That Taxpayer's land consists of the following:

Case #	Legal	Irr. Acre	Dry	Grass	Shelter	Waste	Road	Total
98A-28	18-9-3	132.81	11.6	-0-	-0-	1.0	3.4	148.81
98A-29	18-9-3	62.95	.45	-0-	-0-	-0-	-0-	62.95
98A-30	5-9-3	76.90	-0-	-0-	-0-	.25	-0-	77.15
98A-31	20-9-3	33.4	-0-	-0-	-0-	.54	.95	34.89
98A-32	18-9-3	77.84	-0-	-0-	-0-	-0-	-0-	77.84
98A-33	18-9-3	79.85	-0-	.95	-0-	-0-	1.0	82.75
98A-34	13-9-2	147.86	1.0	-0-	-0-	-0-	2.66	151.52
98A-35	13-9-2	75.34	-0-	-0-	-0-	-0-	3.0	78.34
98A-36	13-9-2	65.22	4.51	9.93	-0-	-0-	-0-	81.66*

* 1 acre homesite. Improvements with a value of \$46,338. (E37:1 - 2).

20. That Taxpayer's agricultural land fewer acres of dryland, grassland, waste, shelterbelt or roads than any of Taxpayer's "comparables." (Taxpayer's total acres protested = 765.91. Total irrigated acres = 752.17. % irrigated = 98.2%. "Comparables" total acres = 589.02. Total irrigated acres = 472.61. % irrigated = 80%.)
21. That irrigated land sells for more than dryland or grassland. (E11 - E16; E18 - E22).
22. That Taxpayer's evidence does not provide any adjustments for the differences cited above. Adjustments must be made for these differences under professionally accepted mass appraisal methods,. *Property Assessment Valuation, 2d Ed.*, p. 105.
23. That therefore Taxpayer's evidence does not establish that its property is overvalued.
24. That Taxpayer's contention that its property is improperly classified rests on its contention that the land is "dryland" not "irrigated land."
25. That "irrigated cropland" is defined as "all land where water is applied, whether for cultivated row crops, small grains, seeded hay, forage crops, or grasses." *1998 Agricultural Land Valuation Manual*, p. 66.
26. That Taxpayer applies water to all land which the Assessor has classified as "irrigated" land.
27. That not all of the "irrigated land" parcels to which Taxpayer applies water has a well on it. That this fact is Taxpayer's primary concern.
28. That the Assessor is required by law to utilize the *Agricultural Land Valuation Manual* in the classification of agricultural real property. Neb. Rev. Stat. §77-1361 (1998 Cum. Supp.).

29. That the uncontroverted evidence is that the County Assessor valued Taxpayer's agricultural real property in accordance with state law and the Agricultural Land Valuation Manual.
30. That Taxpayer has adduced no evidence in support of its first allegation that in determining the value of the property the County was arbitrary.
31. That Taxpayer has adduced no evidence in support of its second allegation that the County did not consider all the factors required by law, rules and regulations to determine the value of the property.
32. That Taxpayer adduced no evidence in support of its third allegation that the County's use of information furnished by other agencies and entities led to an improper valuation of the subject property.
33. That Taxpayer's allegations that the County Assessor did not inspect the subject property and did not make "... valuations in recent years. . ." is not supported by the evidence.
34. That Taxpayer's allegation that the subject property is overvalued in comparison to sales in the area of the subject property is not supported by the evidence.
35. That Taxpayer's allegation that the County erroneously classified dry land as irrigated land is not supported by the evidence.
36. That Taxpayer adduced no evidence which would establish that the County erroneously classified waste and grassland as farm land.
37. That Taxpayer adduced no evidence which would establish that the County was inconsistent in classifying the subject property with comparable property in the area.

38. That Taxpayer adduced no evidence which would establish that the County did not give adequate consideration to the location of the property and sales in the area.
39. That from the record before it, the Commission finds and determines that the actual or fair market value of the subject property as of January 1, 1998, was that value as determined by the County.
40. That the decision of the County was neither unreasonable nor arbitrary.
41. That therefore the decision of the County must be affirmed.

ANALYSIS

Taxpayer's basic contention for both tax years 1997 and 1998 is that land which doesn't have an active well should not be classified as "irrigated land." Taxpayer's contention may have some merit. If Taxpayer sought to sell its land, Neb. Rev. Stat. §76-2,120 (Reissue 1996) might require that Taxpayer list those parcels without a well as "dryland." In order to support its contention that the subject property is overvalued, however, Taxpayer must adduce evidence which would establish that land which is *capable* of being irrigated but which does not have a well on it has an actual or market value less than that of agricultural real property which has a well on it. Taxpayer adduced no evidence of this possibility. Under these circumstances, Taxpayer's contention must fail.

The Commission must also note that Taxpayer failed to adduce any evidence of actual or fair market value. Taxpayer again for tax year 1998 appears to contend that sales prices of "comparable" properties is sufficient to establish market value. The Court of Appeals has resolved this question. The Court has held:

“[Taxpayer] chose to attempt to prove the value of the subject property by showing sales . . . of similar property. [The record] establishes that the comparables are not really comparable. . . .”

DeBruce Grain v. Otoe Cty. Bd. of Equal., 7 Neb. App. 688 (1998). In this case Taxpayer offered no opinion of actual or fair market value, and further offered no evidence of the adjustments necessary to the sales prices of the “comparable” properties made necessary by the differences between the subject properties and the “comparable” properties.

The Commission, from the record in this case, cannot conclude that the decision of the County was unreasonable or arbitrary, and must therefore affirm the County’s decision.

JURISDICTION

Jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (1998 Cum. Supp.).

STANDARD OF REVIEW

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).

CONCLUSIONS OF LAW

First, from the record before it, the Commission concludes as a matter of law that it has jurisdiction over both the parties and the subject matter of this appeal. The Commission further concludes as a matter of law that Taxpayer has not met its burden of proof as required by *Kawasaki, supra*. The Commission must therefore conclude that the decision of the Seward County Board of Equalization should be affirmed.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That the decision of the Seward County Board of Equalization which denied Taxpayers' protest is affirmed.
2. That Taxpayer's agricultural property located in Seward County, Nebraska, shall be valued as follows for tax year 1998, as determined by the Seward County Board of Equalization:

Case #	Legal Description	Total Assessed Value*
98A-28	SW ¼ 18-9-3	\$216,226
98A-29	S ½ NE ¼ 18-9-3	\$96,282
98A-30	W ½ SE ¼ 5-9-3	\$105,890
98A-31	NW¼ NW ¼ 20-9-3	\$45,418
98A-32	N ½ SE ¼ 18-9-3	\$117,619
98A-33	E ½ NW ¼ & SW ¼ 18-9-3	\$121,281
98A-34	NE ¼ 13-9-2	\$220,645
98A-35	N ½ NW ¼ 13-9-2	\$114,296
98A-36	S ½ NW ¼ & PT . . . 13-9-2	\$157,276

*Land and Improvements


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

IT IS SO ORDERED.

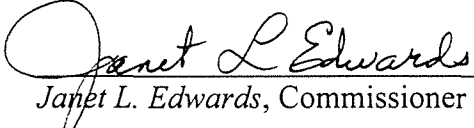
Dated this 2nd day of August, 1999.



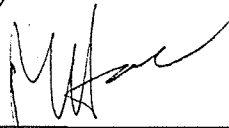
Seal



Mark P. Reynolds, Chairman



Janet L. Edwards, Commissioner



Robert L. Hans, Commissioner