

BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION

WILLIS D. KROGER,

Appellant,

vs.

BURT COUNTY BOARD OF
EQUALIZATION,

Appellee.

CASE NO. 97R-387

**DISMISSAL WITH PREJUDICE
AFTER WITHDRAWAL
OF APPEAL**

The Nebraska Tax Equalization and Review Commission ("Commission") called the above-captioned case for hearing on the merits in the City of Omaha, Douglas County, Nebraska, on the 24th day of August, 1998, pursuant to an Amended Notice of Hearing issued the 10th day of April, 1998.

Taxpayer appeared personally at this hearing, and County appeared through County Assessor. During the hearing, the Commission took judicial notice of certain information. The Commission afforded each of the parties the opportunity to present evidence and argument. Thereafter Taxpayer moved to withdraw his appeal.

Neb. Rev. Stat. §77-5018 (1997 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 considering the evidence and argument contained in the record before it, entered its Final Order on the merits of the appeal in this case, which was in substance as follows:

FINDINGS OF FACTS

From the record, the Commission finds and determines as follows:

1. That the Taxpayer is the owner of record of certain agricultural real property as legally described in the petition ("subject property").
2. That the County Assessor proposed valuing the subject property for purposes of taxation for tax year 1997 in the amount of \$167,090.
3. That Taxpayer timely filed a protest of that determination of value to the Burt County Board of Equalization ("County").
4. That the basis for the protest was the allegation that the change in assessed value for tax year 1997 over the 1996 value was improperly made based on eliminating the 40% economic depreciation factor attributed to the subject property in previous tax years and by doubling the site value.
5. That the Taxpayer requested that the property be valued at \$130,905 for purposes of taxation.
6. That the County denied the protest.
7. That Taxpayer thereafter timely filed an appeal of that decision to the Commission.
8. That the County demurred to Taxpayer's appeal.
9. That the issues presented by Taxpayer to the Commission are (1) equalization; (2) allegedly illegal action of the County on July 29, 1997; (3) the lack of written standard operating procedures for the County; and (4) certain 1996 decisions of the Nebraska Tax Equalization and Review Commission.

10. That the Commission determined that the only issues properly before the Commission in this proceeding were (1) the elimination of the forty percent (40%) economic depreciation factor attributed to the subject property in previous tax years; and (2) the increase in site value attributed to the subject property in tax year 1997.
11. That the Commission announced this decision on the record.
12. That thereafter Taxpayer has moved to withdraw the appeal.
13. That the Taxpayer was advised that an Order Dismissing the Appeal would be with prejudice.
14. That the Taxpayer was advised that he would not be entitled to a refund of his filing fee as a result of the dismissal.
15. That after being advised of these matters, Taxpayer insisted that the appeal be withdrawn.

CONCLUSIONS OF LAW

1. That Neb. Rev. Stat. §Neb. Rev. Stat. §77-1511 (Reissue 1996) only authorizes the Commission to consider anew the questions raised before the County Board of Equalization.
2. That the Nebraska Supreme Court has held that the Commission may only consider those other issues raised for the first time before the Commission when those issues are “. . . sufficiently related in content and context to be deemed the same question at both levels.” *Arcadian Fertilizer v. Sarpy County Board of Equalization*, 7 Neb. App. 499, 505 (1998).

3. That therefore as a matter of law the only issues properly before the Commission are (1) the elimination of the forty percent (40%) economic depreciation factor attributed to the subject property in previous tax years; and (2) the increase in site value attributed to the subject property in tax year 1997.
4. That the Commission is required to dismiss an appeal when the Taxpayer insists on withdrawing an appeal.
5. That this Appeal should be dismissed with prejudice.
6. That if an Appeal is dismissed with prejudice the decision of the County becomes final.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That this appeal is ordered dismissed with prejudice.
2. That therefore the order of the Burt County Board of Equalization setting the assessed value of the subject property for tax year 1997 at \$167,090 is final.
3. That Taxpayer's real property legally described as the West 1/2 of the NE 1/4 of Section 30, Township 23, Range 9, Burt County, Nebraska, shall be valued as follows for tax year 1997, as determined by the Burt County Board of Equalization:

Land	\$ 63,125
Improvements	\$103,695
Total	\$167,090

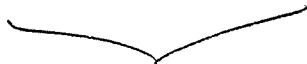
4. That this decision, if no appeal is filed, shall be certified within thirty days to the Burt County Treasurer, and the Burt County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
5. That this decision shall only be applicable to tax year 1997.
6. That each party is to bear its own costs in this matter.

IT IS SO ORDERED.

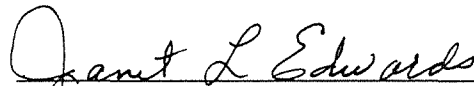
Signed and sealed this 25th day of August, 1998.



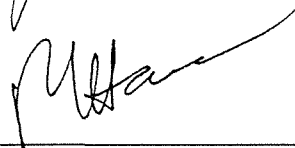
Seal



Mark P. Reynolds, Chairman



Janet L. Edwards, Commissioner



Robert L. Hans, Commissioner