

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Don L. Clarke,
Appellant,

v.

Dodge County Board of Equalization,
Appellee.

Case Nos: 16A 0146, 16A 0147, 16A 0148,
16A 0149 & 16A 0150

Order Denying Reconsideration

And

Decision and Order Affirming the
Determination of the Dodge County Board
of Equalization
(Default Judgment)

For the Appellant:
No Appearance

For the Appellee:
Brent Quandt,
Deputy Dodge County Attorney

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property comprises five agricultural parcels located in Dodge County. The legal descriptions of the parcels are found in the Case Files.

II. PROCEDURAL HISTORY

The Dodge County Assessor (the County Assessor) determined that the assessed value of the Subject Property in Case No. 16A 0146 was \$73,350 for tax year 2016. Don L. Clarke (the Taxpayer) protested this assessment to the Dodge County Board of Equalization (the County Board). The County Board determined that the taxable value for tax year 2016 was \$73,350.¹

The County Assessor determined that the assessed value of the Subject Property in Case No. 16A 0147 was \$90,675 for tax year 2016. The Taxpayer protested this assessment to the County Board. The County Board determined that the taxable value for tax year 2016 was \$90,675.²

¹ See Case File.

² *Id.*

The County Assessor determined that the assessed value of the Subject Property in Case No. 16A 0148 was \$28,575 for tax year 2016. The Taxpayer protested this assessment to the County Board. The County Board determined that the taxable value for tax year 2016 was \$28,575.³

The County Assessor determined that the assessed value of the Subject Property in Case No. 16A 0149 was \$13,980 for tax year 2016. The Taxpayer protested this assessment to the County Board. The County Board determined that the taxable value for tax year 2016 was \$13,980.⁴

The County Assessor determined that the assessed value of the Subject Property in Case No. 16A 0150 was \$7,635 for tax year 2016. The Taxpayer protested this assessment to the County Board. The County Board determined that the taxable value for tax year 2016 was \$7,635.⁵

The Taxpayer appealed each of these decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission scheduled a hearing on the merits of the appeals for October 29, 2018. On October 15, 2018, the Taxpayer filed a Motion/Petition for Continuance, which the Commission denied on October 22, 2018. On October 29, 2018, the Taxpayer filed a Motion/Petition for Reconsideration of Order Denying Motion for Continuance (Motion for Reconsideration). The Commission held the hearing on the merits of the appeals on October 29, 2018, as scheduled. No one appeared at the time of the hearing on behalf of the Taxpayer.

III. MOTION FOR RECONSIDERATION

The Taxpayer's Motion for Reconsideration appears to have been mailed on October 25, 2018, and received by the Commission on October 29, 2018. The Commission may, with or without a hearing, consider any motion or objection and grant or deny the motion.⁶ Although the Taxpayer's initial motion makes references to a "quasi[-]judicial' effort and/or action, the result of which will undoubtedly constitute legal precedent impacting above captioned cases," it provides no meaningful explanation of what this action might be, how it will impact the appeals under consideration, or any other good cause for a continuance. To the extent a procedural order (as opposed to a final order on the merits of an appeal or petition) is subject to reconsideration by

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Title 442 Neb. Admin. Code Ch. 5 §014.09 (6/11).

the Commission, the undersigned majority of the Commission denies the request for reconsideration. The order denying the request for continuance remains in full force and effect.

IV. STANDARD OF REVIEW

“In all appeals, excepting those arising under section 77-1606, if the appellant presents no evidence to show that the order, decision, determination or action appealed from is incorrect, the commission shall deny the appeal.”⁷ The Commission is authorized to enter default judgments.⁸ If an appellant is not present at any hearing before the Commission within fifteen minutes of a time for hearing, for which notice has been provided to the appellant, the Commission may enter an order dismissing the appeal or order relief by default.⁹

V. FACTS & ANALYSIS

The Commission issued an Order for Hearing and Notice of Hearing on July 13, 2018, setting the hearing date for October 29, 2018.¹⁰ An Affidavit of Service which appears in the records of the Commission established that a copy of the Order for Hearing and Notice of Hearing was served on all parties.¹¹ That Order for Hearing and Notice of Hearing was in effect at all material times, and was not modified or stayed by the Taxpayer’s Motion/Petition for Continuance or the Taxpayer’s Motion for Reconsideration. The Commission held a hearing on October 29, 2019. No one appeared on behalf of the Taxpayer as directed by the Commission’s Order for Hearing. The County Board moved for a default judgment in favor of the County Board’s determination. Because the Taxpayer was provided with notice of the hearing, but did not appear at the hearing as required by the Order for Hearing and Notice of Hearing, entry of an Order for Default Judgment is appropriate.

VI. CONCLUSIONS

The Motion for Reconsideration should be denied. The Taxpayer was provided with notice of the hearing. The Taxpayer failed to appear at the hearing as required by the Order for Hearing

⁷ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

⁸ Neb. Rev. Stat. §77-5015 (2016 Cum. Supp.).

⁹ Title 442 Neb. Admin. Code Ch. 4 §010.08 (6/11).

¹⁰ See Case File.

¹¹ *Id.*

and Notice of Hearing. The motion for an Order of Default Judgment should be granted and the decisions of the County Board should be affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The Taxpayer's Motion for Reconsideration is denied.
2. The Motion of the County Board for Default Judgment is granted.
3. The Decisions of the Dodge County Board of Equalization determining the taxable value of the Subject Property for tax year 2016 are affirmed.
4. The taxable value of the Subject Property for tax year 2016 is:
 - Case No. 16A 0146: \$73,350
 - Case No. 16A 0147: \$90,675
 - Case No. 16A 0148: \$28,575
 - Case No. 16A 0149: \$13,980
 - Case No. 16A 0150: \$7,635
5. This Decision and Order, if no appeal is timely filed, shall be certified to the Dodge County Treasurer and the Dodge County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each Party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax year 2016.
9. This Decision and Order is effective for purposes of appeal on November 9, 2018.¹²

Signed and Sealed: November 9, 2018

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

¹² Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.