

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

RAYMOND W. RIEKER and)	
VIRGINIA L. RIEKER,)	
)	CASE NO. 03A-36
Appellants,)	03A-37
)	
vs.)	
)	FINDINGS AND FINAL ORDER
FRONTIER COUNTY BOARD OF)	DISMISSING APPEAL AT THE CLOSE
EQUALIZATION,)	OF THE TAXPAYERS' CASE
)	
Appellee.)	
)	

Appearances:

For the Appellant: Raymond W. Rieker
RR #1, Box 171
Eustis, NE 69028

For the Appellee: Jon S. Schroder
Frontier County Attorney
P.O. Box 4
Curtis, NE 69025

Before: Commissioners Hans, Reynolds, and Wickersham.

**I.
STATEMENT OF THE CASE**

Raymond W. Rieker and Virginia L. Rieker ("the Taxpayers") own two tracts of land in Frontier County, Nebraska. The Taxpayers, in Case Number 03A-36, own a 156 acre tract of land legally described as PT of the N $\frac{1}{2}$ SW $\frac{1}{4}$ and the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 1, Township 8, Range 24. (E8:1). There are no improvements on this tract of land. (E8:1). The Taxpayers, in Case Number 03A-37, own a 154 acre tract of land legally described as PT of the N $\frac{1}{2}$ NE $\frac{1}{4}$ and PT of the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 2, Township 8, Range 24. (E10:1). This tract of land is improved with one-story single family

residence with 1,696 square feet of above-grade finished living area built in 1969. (E10:3).

The Frontier County Assessor ("the Assessor") determined that 80% of the actual or fair market value of the subject property in Case Number was \$145,560 as of the January 1, 2003, assessment date. (E1). The Taxpayers timely filed a protest of that determination and requested that the proposed value be reduced. (E1). The Frontier County Board of Equalization ("the Board") denied the protest. (E1). The Taxpayers appealed the Board's decision on August 20, 2003.

The Assessor determined that 80% of the actual or fair market value of the agricultural land and 100% of the actual or fair market value of the non-agricultural land and the improvements in Case Number 03A-37 was \$273,441 as of the assessment date. (E9:1). The Taxpayers timely filed a protest of that determination and requested that the proposed value be reduced. (E9:1). The Board granted the protest in part. (E9:1). The Taxpayers appealed the Board's decision on August 20, 2003.

The Commission served a Notice in Lieu of Summons on the Board in each appeal on September 8, 3002. The Board filed a Special Appearance and Motion to Dismiss, which the Commission overruled. The Board filed an Answer on December 1, 2003. The Commission consolidated the Taxpayer's appeals for purpose of

hearing, and issued an Order for Hearing and Notice of Hearing to each of the Parties on June 2, 2004. An Affidavit of Service in the Commission's records establishes that a copy of the Order and Notice was served on each of the Parties.

The Commission called the case for a hearing on the merits of the appeal in the City of North Platte, Lincoln County, Nebraska, on October 4, 2004. The Taxpayers appeared personally at the hearing. The Board appeared through Jon S. Schroeder, Esq., the Frontier County Attorney. Commissioners Hans, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer. Commissioner Lore was excused from the proceedings.

The Commission afforded each of the Parties the opportunity to present evidence and argument. The Taxpayers stated on the record that the value of the improvements in Case Number 03A-37 is not at issue. The Taxpayers also stated that the purpose of the appeal is to obtain uniform per acre assessed values for all classes and subclass of agricultural land in Frontier, Lincoln, Gosper and Dawson Counties for the benefit of the Eustis Farm Public School District. The Taxpayers specifically stated on the record that they did not want their agricultural land assessments reduced.

The Board, at the conclusion of the Taxpayers' case-in-chief, moved to dismiss the appeals for want of jurisdiction and for failure to overcome the statutory presumption.

II. ISSUES

The only issue presented in this appeal is whether either the Frontier County Board of Equalization or this Commission has the authority to impose uniform per acre assessed values for all classes and subclasses of agricultural land in Frontier, Gosper Lincoln and Dawson counties.

III. APPLICABLE LAW

The Taxpayers' appeals raise two questions: the first is a question of jurisdiction; the second is a question of valuation. Jurisdiction is the inherent power or authority to decide a case. *Riley v. State*, 244 Neb. 250, 255, 506 N.W.2d 45, 48 (1993). The Commission only has that "authority" which is specifically conferred upon it by the Constitution of the State of Nebraska, the Nebraska State Statutes, or by the construction necessary to achieve the purpose of the relevant provisions or acts. See, e.g., *Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 554 N.W.2d 778 (1996). There is no presumption that the Commission has jurisdiction. *Arcadian*

Fertilizer, L.P. v. Sarpy County Bd. of Equal., 7 Neb.App. 499, 504 - 505, 583 N.W.2d 353, 356 - 357 (1998). (Citations omitted).

The Frontier County Board of Equalization has no authority to equalize assessments between counties. That authority is reserved to the Commission pursuant to Art. IV, Neb. Const., §28. See also *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb. 810, 606 N.W.2d 736 (2000). The Commission's authority to equalize assessments within a county or between counties is limited to that period of time beginning after the Commission receives the reports and opinions of the Property Tax Administrator, and ending on May 15 of each year. Neb. Rev. Stat. §77-5027 (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §65). The Commission therefore lacks jurisdiction to equalize assessments by class or subclass in an appeal pursuant to Neb. Rev. Stat. §77-1510 (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §35).

The Taxpayers also request uniform per acre assessed values for each class and subclass within four counties. The Nebraska Constitution provides that taxes shall be levied uniformly and proportionately on all real property. Art. VIII, Neb. Const., §1. Many seem to assume that real property taxes are equalized if property is classified, and the same values applied to the same classifications of property in all counties. The Constitution

itself flatly contradicts such a conclusion. *Gage County v. State Bd. of Equalization and Assessment*, 185 Neb. 749, 751, 178 N.W.2d 759, 761 (1970). The Supreme Court has held that the uniformity clause requires assessed values which are a uniform percentage of actual value. *Gage County, supra*. There is no evidence that irrigated agricultural land in Frontier County sells for the same per acre price as irrigated agricultural land in Dawson, Gosper or Lincoln Counties.

The Taxpayers' appeals fail to state an issue upon which relief can be granted, and further call upon the Commission to exercise jurisdiction over an issue which the Commission lacks authority. The Board's Motions to Dismiss must accordingly be granted.

IV. FINDINGS OF FACT

The Commission finds and determines that:

1. The Taxpayers allege that the assessed values of their agricultural land is "fair."
2. The Taxpayers specifically declined any reduction in the assessed values of their agricultural land.

V.
ANALYSIS

The Commission lacks subject matter jurisdiction over either issue raised by the Taxpayers. The Commission, in the absence of jurisdiction, must dismiss a pending appeal as a matter of law. *Jacobson v. Jacobson*, 10 Neb.App. 622, 624, 635 N.W.2d 272, 275 (2001). Their appeals must accordingly be dismissed.

VI.
CONCLUSIONS OF LAW

1. The Commission lacks jurisdiction over the subject matter of this appeal.
2. The Commission is required to affirm the decision of the Board unless evidence is adduced establishing that the Board's action was incorrect and either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).
3. The Board is presumed to have faithfully performed its official duties in determining the actual or fair market value of the property. The Board is also presumed to have acted upon sufficient competent evidence to justify its decision. These presumptions remain until the Taxpayers presents competent evidence to the contrary. If the presumption is extinguished the reasonableness of the Board's value becomes one of fact based upon all the

evidence presented. The burden of showing such valuation to be unreasonable rests on the Taxpayers. *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).

4. "Actual value" is defined as the market value of real property in the ordinary course of trade, or the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's-length transaction, between a willing buyer and willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. Neb. Rev. Stat. §77-112 (Reissue 2003).
5. The Taxpayers have failed to adduce clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary.
6. The Board's Motion to Dismiss for want of jurisdiction and for failure to overcome the statutory presumption must be granted.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Frontier County Board of Equalization's Motions to Dismiss are granted and these appeals are dismissed.

2. The Frontier County Board of Equalization's Orders setting the assessed value of the subject property for tax year 2003 are final subject only to an appeal pursuant to Neb. Rev. Stat. §77-5019 (2003 Reissue).

3. The Taxpayer's real property in Case Number 03A-36 legally described as Part of the N $\frac{1}{2}$ SW $\frac{1}{4}$ and the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 1, Township 8, Range 24, in Frontier County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Land	\$145,560
Improvements	\$ -0-
Total	\$145,560

4. The Taxpayer's real property in Case Number 03A-37 legally described as Part of the N $\frac{1}{2}$ NE $\frac{1}{4}$ and Part of the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 2, Township 8, Range 24, in Frontier County, Nebraska, shall be valued as follows for tax year 2003 as determined by the Board:

Land	\$147,175
Improvements	\$ 99,072
Total	\$246,247

5. Any request for relief by any Party not specifically granted by this order is denied.

6. This decision, if no appeal is filed, shall be certified to the Frontier County Treasurer, and the Frontier County

Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).

7. This decision shall only be applicable to tax year 2003.

8. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

I certify that I made and entered the above and foregoing Findings and Orders in this appeal on the 4th day of October, 2004. The same were approved and confirmed by Commissioners Hans and Reynolds and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Reissue 2003).

Signed and sealed this 5th day of October, 2004.

SEAL

Wm. R. Wickersham, Chair