

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Nebraska Beef Packers, Inc,
Appellant,

v.

Sheridan County Board of Equalization,
Appellee.

Case Nos: 17A 0033, 17A 0034, 17A 0035
& 17A 0036

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

For the Appellant:

No Appearance

For the Appellee:

Jamian J. Simmons,
Sheridan County Attorney

The appeals were heard before Commissioners Steven Keetle and James Kuhn.

I. THE SUBJECT PROPERTY

The Subject Properties are four agricultural parcels located in Sheridan County. The legal description of the parcels are found in the Case Files.

II. PROCEDURAL HISTORY

The Sheridan County Assessor determined that the assessed value of the Subject Property in Case No. 17A 0033 was \$696,945 for tax year 2017. Nebraska Beef, Inc (the Taxpayer) protested this assessment to the Sheridan County Board of Equalization (the County Board) and requested a different assessed valuation. The County Board determined that the assessed value for tax year 2017 was \$696,945.¹

The Sheridan County Assessor determined that the assessed value of the Subject Property in Case No. 17A 0034 was \$34,295 for tax year 2017. The Taxpayer protested this assessment to

¹ See, Case File 17A 0033. The determination of the County Board for this case appears to include a clerical error: both the land value and total value of the parcel are listed at \$696,945. Because the County Board states “No evidence [was] presented to justify a change in value,” we infer that the County Board intended to retain the values set by the Sheridan County Assessor, and our Order below reflects that conclusion.

the County Board and requested a different assessed valuation. The County Board determined that the assessed value for tax year 2017 was \$34,295.²

The Sheridan County Assessor determined that the assessed value of the Subject Property in Case No. 17A 0035 was \$440,602 for tax year 2017. The Taxpayer protested this assessment to the County Board and requested a different assessed valuation. The County Board determined that the assessed value for tax year 2017 was \$440,602.³

The Sheridan County Assessor determined that the assessed value of the Subject Property in Case No. 17A 0036 was \$257,493 for tax year 2017. The Taxpayer protested this assessment to the County Board and requested a different assessed valuation. The County Board determined that the assessed value for tax year 2017 was \$257,493.⁴

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). The Commission issued an Order Consolidating Appeals for Hearing and an Order for Hearing and Notice of Hearing on February 2, 2018, setting the hearing date for June 14, 2018. Affidavits of Service which appear in the records of the Commission establish that a copy the Order for Hearing and Notice of Hearing was served on all parties.⁵

The Commission held a hearing on June 14, 2018, at 10:00 a.m. as set forth in the Order for Hearing and Notice of Hearing. On June 14, 2018, the Taxpayer faxed several pages which purport to be an Objection to Proper Venue and Petition to Challenge Proper Venue to the Commission's office in Lincoln. The Commission denied the Objection and Petition on the record at the hearing. 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. Additionally the County Board requested time to file a Motion for Costs to be assessed against the Taxpayer in this matter. The County Board was granted additional time to submit a written motion for costs and fees and an Affidavit in support of the requested costs. On June 21, 2018, the County Board filed a Motion for Costs and Fees and an Affidavit in Support of Motion for Costs. The Motion for Costs contains an Affidavit of Service establishing that a copy of the Motion for Costs was served on the Taxpayer.⁶ The

² See, Case File 17A 0034.

³ See, Case File 17A 0035.

⁴ See, Case File 17A 0036.

⁵ See, Case Files.

⁶ See Case Files, Title 442 Neb. Admin. Code ch 4 §004.03B (6/11).

Taxpayer did not file a response to the Motion for Costs within 10 days of the filing of the Motion.⁷

III. 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.”⁸ The Commission is authorized to enter default judgments.⁹ 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.¹⁰

“The costs of any appeal, including the costs of witnesses, may be taxed by the commission as it deems just, except costs payable by the appellant pursuant to section 77-1510.01, unless (a) the appellant is the county assessor or county clerk in which case the costs shall be paid by the county or (b) the appellant is the Tax Commissioner or Property Tax Administrator in which case the costs shall be paid by the state[.]”¹¹

IV. ANALYSIS

The Commission sent out the Order for Hearing and Notice of Hearing for these appeals on February 2, 2018. This Order for Hearing and Notice of Hearing set forth a requirement that the parties exchange evidence, conduct a pre-hearing conference, and file a pre-hearing conference report prior to the hearing date. The Case Files contain a Disclosure of Evidence/Witnesses and Affidavit of Service filed by the County Board demonstrating that it provided the Taxpayer copies of exhibits it intended to offer as well as the expectation that the County Assessor would be called as a witness. The Case File further contains a Pretrial Conference Report filed by the County Board indicating that the County Attorney attempted to conduct a pre-hearing conference but that the Taxpayer did not respond to the County Board’s request to schedule a pre-hearing conference. Attached to the Pretrial Conference Report is a copy of correspondence from the County Attorney to the Taxpayer attempting to schedule a pre-hearing conference on behalf of

⁷ See, Title 442 Neb. Admin. Code ch 4 §004.03C (6/11).

⁸ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

⁹ Neb. Rev. Stat. §77-5015 (2016 Cum. Supp.).

¹⁰ Title 442 Neb. Admin. Code ch 4 §010.08 (6/11).

¹¹ Neb. Rev. Stat. §77-5016(12) (2016 Cum. Supp.).

the County Board. The Taxpayer did not exchange evidence with the County Board or participate in a pre-hearing conference as required by the Order for Hearing and Notice of Hearing. The Taxpayer did not object to the scheduled hearing location or otherwise file any motion or comply with the requirements of the Order for Hearing and Notice of Hearing prior to the schedule date of the hearing. Because the Taxpayer did not appear at the hearing within fifteen minutes of the time provided in the Order for Hearing and Notice of Hearing, entry of an order for relief by default is appropriate.

The Commission has the statutory authority to assess costs of an appeal as it deems just.¹² The Nebraska Administrative Code contains some guidelines for assessment of cost against a party which include a failure to comply with an Order for Hearing and Notice of Hearing issued by the Commission¹³ and failing to appear for a duly noticed hearing,¹⁴ and undertaking action that was frivolous or dilatory.¹⁵ The record before the Commission demonstrates that the Taxpayer failed to comply with the exchange of exhibit, pre-hearing conference and pre-hearing conference report requirements of the Order for Hearing and Notice of Hearing. The Taxpayer failed to respond to the County Board's inquiry regarding a pre-hearing conference as required by the Notice of Hearing and Order for Hearing. Further, the Taxpayer failed to appear at the duly noticed hearing, instead sending a fax the day of the hearing indicating that the Taxpayer objected to the proceeding and wouldn't appear, without establishing good cause for either action. The Commission finds that an assessment of the County Board's costs incurred against the Taxpayer as the offending party should be made.

The County Board submitted an Affidavit in Support of its Motion for Costs setting forth the following costs: \$42.60 (Evidence), \$12.78 (Postage), \$822.29 (Mileage), and \$314 (Hotel Expenses).¹⁶ The Commission finds and determines that it should award the Evidence, Postage, and Hotel Expense costs, for a total of \$369.38, to the County Board, payable by the Taxpayer in this proceeding. The Commission notes that the County Board was a party in another hearing held before the Commission in the afternoon of June 14, 2018, and the same representative and

¹² See. Neb. Rev. Stat §77-5016(12) (Reissue 2012)

¹³ Title 442 Neb. Admin. Code, ch 4, §004.02A1 (6/11)

¹⁴ Title 442 Neb. Admin. Code, ch 4, §004.02A2 (6/11)

¹⁵ Title 442 Neb. Admin. Code, ch 4, §004.02A3 (6/11)

¹⁶ See, Case Files.

witness for the County Board appeared in that matter, and that therefore the Commission should not assess the mileage costs submitted against the Taxpayer.

V. CONCLUSION

The Taxpayer failed to appear at the hearing as required by the Order for Hearing and Notice of hearing and therefore presented no evidence to show that the order, decision, determination or action appealed from was incorrect. The motion for an Order of Default Judgment should be granted and the decisions of the County Board in Case Nos. 17A 0034, 17A 0035, and 17A 0036 are affirmed. The decision of the County Board in Case No. 17A 0033 contains the clerical error discussed above and is affirmed as modified below. The Commission further finds that \$369.38 in costs be awarded to the County Board and that the Taxpayer should pay these costs incurred by the County Board in this proceeding. Payment of \$369.38 should be submitted and made payable to the Sheridan County Board of Equalization.¹⁷

VI. ORDER

IT IS ORDERED THAT:

1. The Motion of the County Board for Default Judgment is granted.
2. The Decisions of the Sheridan County Board of Equalization in Case Nos. 17A 0034, 17A 0035, and 17A 0036 determining the value of the Subject Property for tax year 2017 are affirmed; the decision of the County Board in Case No. 17A 0033 is affirmed as modified below.
3. The Taxpayer shall pay costs in the amount of \$369.38 to the Sheridan County Board of Equalization.
4. The taxable value of the Subject Properties for tax year 2017 are:

Case No. 17A 0033¹⁸

Land:	\$666,896
<u>Improvement:</u>	<u>\$ 30,049</u>
Total:	\$696,945

¹⁷ Title 442 Neb. Admin. Code ch 4 §004.05 (6/11)

¹⁸ Land value modified from \$666,945.

Case No. 17A 0034

Land: \$ 34,295
Total: \$ 34,295

Case No. 17A 0035

Land: \$440,602
Total: \$440,602

Case No. 17A 0036

Land: \$194,093
Improvement: \$ 63,400
Total: \$257,493

5. This Decision and Order, if no appeal is timely filed, shall be certified to the Sheridan County Treasurer and the Sheridan 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 2017.
9. This Decision and Order is effective for purposes of appeal on November 2, 2018.

Signed and Sealed: November 2, 2018

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner

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