

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

PATRICIA M. SULLIVAN,	)	
	)	
Appellant,	)	CASE NO. 98R-95
	)	
vs.	)	
	)	
SARPY COUNTY BOARD OF	)	<b>DOCKET ENTRY</b>
EQUALIZATION,	)	<b>AFFIRMING DECISION</b>
	)	<b>OF COUNTY</b>
	)	
Appellee.	)	
	)	

The Nebraska Tax Equalization and Review Commission ("Commission") called the above-captioned case for a hearing on the merits of the appeal in the City of Papillion, Sarpy County, Nebraska, on the 4<sup>th</sup> day of February, 1999, pursuant to a Notice of Hearing issued the 28<sup>th</sup> day of December, 1998.

Patricia M. Sullivan ("Taxpayer") appeared personally at the hearing, and the Sarpy County Board of Equalization appeared through the Deputy Sarpy County Attorney. During the hearing, the Commission took judicial notice of certain information, and each of the parties was afforded the opportunity to present evidence and argument. Each party was also afforded the opportunity to cross-examine witnesses of the opposing party as required by law.

Neb. Rev. Stat. §77-5018 (1998 Cum. 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 exhibits and hearing evidence and argument, entered its Findings of Fact, Conclusions of Law, and a Final Order on the merits of the appeal in this case, which were in substance as follows:

## FINDINGS OF FACT

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

### A. PROCEDURAL FINDINGS

1. That Taxpayer is the owner of record of certain rural residential property located in Sarpy County, Nebraska ("subject property").
2. That the Sarpy County Assessor ("Assessor") proposed valuing the subject property for purposes of taxation in the amount of \$177,321 as of January 1, 1998 ("assessment date").
3. That Taxpayer timely filed a protest of the proposed valuation, and requested that the subject property be valued at \$150,092. (Appeal Form).
4. That the basis of the protest was the allegation that the property was overvalued.
5. That the County granted the protest in part, and reduced the land component of the assessed value from \$49,820 to \$40,420 before the County's equalization factor was applied.
6. 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 the value of the shed is not at issue.

2. That Taxpayer adduced no evidence of the actual or fair market value of the subject property.
3. That although equalization may have been an issue before the County, the Taxpayer adduced no evidence which would establish that the decision of the County was the result of a “. . . deliberate and intentional discrimination systematically applied. . .” *See, e. g., Kearney Convention Center v. Buffalo Cty. Bd. Of Equal.*, 216 Neb. 292, 344 N. W. 2d 620 (1984).
4. That vacant lots are usually treated as a separate subclass of real property.
5. That professionally accepted mass appraisal practices typically allow vacant lots be discounted, sometimes referred to as a “developer’s discount.”
6. That Lot 32, as a vacant lot, appears to carry a discounted value for the land component, and is therefore not comparable to an improved lot such as the subject property.
7. That the County’s appraiser testified that, in the Taxpayer’s subdivision, and based on a market study; and depending on amenities: one acre lots are valued at between \$44,000 and \$47,000 depending on amenities; that 2 acre lots are valued at approximately \$47,000; that 3 acre lots are valued at approximately \$52,000; and that 4 acre lots are valued at \$53,000 to \$54,000.
8. That the record before the Commission does not demonstrate that the land component of the subject property is overvalued.
9. That the County utilizes an equalization factor of 94% which is applied to all residential land and improvements in the County.

10. That this factor was applied to both the land component and the improvements to the subject property.
11. That as a result of County action the land component of the subject property's assessed value is now the same as or lower than comparable developed one and two acre land values within the Fairview Heights Subdivision.
12. That the Taxpayer alleged that the most comparable improvements to the improvements to the subject property are shown in Exhibit 10. That Exhibit 10 demonstrates that the improvements to the subject property are older than those shown in Exhibit 10; and that the subject property receives greater physical depreciation than the home shown in Exhibit 10.
13. That the record before the Commission does not demonstrate that any component of the subject property is overvalued.
14. That Taxpayer purchased the subject property in 1995 for \$162,000.
15. 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 at least \$167,921.
16. That therefore the assessed value of the subject property for tax year 1998 as determined by the County is supported by the evidence.
17. That insufficient evidence has been adduced to establish that the decision of the County was unreasonable or arbitrary.
18. That therefore the decision of the County must be affirmed.

## CONCLUSIONS OF LAW

1. That the Commission has jurisdiction over the parties and the subject matter of this appeal.
2. That 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.
3. 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).
4. That "In the evaluation of real property for tax purposes, where buildings and improvements are taxable as part of the real estate, the critical issue is the actual value of the entire property, not the proportion of that value which is allocated to the land or to the buildings and improvements by the appraiser." *Bumgarner v. Valley County*, 208 Neb. 361, 366, 303 N. W. 2d 307, 310 (1981).

5. That although the goal is the actual or fair market value of the entire property, the components of the real estate may be assessed separately. *See, e. g. Phelps Co. v. Anderson*, 2 Neb. App. 236, 508 N. W. 2d 314 (1993).
6. That the Assessor is required by law to utilize professionally accepted mass appraisal practices in the assessment of real property. Neb. Rev. Stat. §77-112 (Reissue 1996).
7. That professionally accepted mass appraisal practices require that when appraising real estate, the Assessor must consider two separate entities: "land, which is the nonwasting portion of the real estate; and improvements, which are the wasting portion subject to various forms of depreciation." *Property Assessment Valuation*, 2<sup>nd</sup> Ed., p. 69.
8. Further, that the Assessor, in the valuation of improvements, may utilize any of three different professionally accepted mass appraisal methods. That the Assessor, in the valuation of land, may utilize any of six different professionally accepted mass appraisal methods. That therefore the various components of real property may be valued separately under professionally accepted mass appraisal practices. *Property Assessment Valuation*, pp. 42 and 69.
9. That based on the record before the Commission, insufficient evidence has been adduced to establish that the action of the County in this case was unreasonable or arbitrary.
10. That although cost is not synonymous with value, ". . . the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue. . .". *Forney v. Box Butte Cty. Bd. Of Equal.*, 7 Neb. App. 417 (1998).

11. That insufficient evidence has been adduced which would establish that the decision of the County in relying on the recommendation of the Referee was unreasonable or arbitrary.
12. That the appraisal of real estate is not an exact science. *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N. W. 2d 872, 874 (1977).
13. That the prior years assessment is not relevant to the subsequent year's valuation. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N. W. 2d 451 (1944).
14. That as a matter of law the Taxpayer has NOT met her burden of proof as required by *Kawasaki Motors v. Lancaster Cty. Bd. Of Equal.*, 7 Neb. App. 655 (1998).
15. That based on the record before the Commission, the Commission must, and hereby does, conclude as a matter of law that the decision of the Sarpy County Board of Equalization which set the assessed value of the subject property for purposes of taxation at \$167,921 for tax year 1998 was neither unreasonable nor arbitrary.
16. That therefore the decision of the Sarpy County Board of Equalization must be affirmed.

#### **ORDER**

1. That the order of the Sarpy County Board of Equalization setting the assessed value of the subject property for tax year 1998 at \$167,921 is affirmed.
2. That Taxpayer's rural residential real property, legally described as Lot 43, Fairview Heights, Sarpy County, Nebraska, shall be valued as follows for tax year 1998:

Land	\$ 37,600
Improvements	\$130,321
Total	\$167,921

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

**IT IS SO ORDERED.**

**The above and foregoing Findings of Fact, Conclusions of Law, and Order were approved by a quorum of the Commission, and entered of record on the 4<sup>th</sup> day of February, 1999, and are therefore deemed to be the Order of Commission in this case, pursuant to Neb. Rev. Stat. §77-5005. (Reissue 1996).**

Signed and sealed this 9<sup>th</sup> day of February, 1999.

SEAL



*Mark P. Reynolds, Chairman*