

RECEIVED

JAN 12 1999

OSCAR LAW LIBRARY  
UNL COLLEGE OF LAW

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

**DARLENE GRAF,** )  
**PHELPS COUNTY ASSESSOR,** )  
 )  
**Appellant,** )  
 )  
**vs.** )  
 )  
**PHELPS COUNTY BOARD OF** )  
**EQUALIZATION, and** )  
 )  
**GARY W. WALL,** )

**CASE NO. 98R-214**

**DOCKET ENTRY  
REVERSING DECISION OF  
APPELLEE**

**Appellees.**

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 Grand Island, Hall County, Nebraska, on the 15<sup>th</sup> day of December, 1998, pursuant to a Notice of Hearing issued the 20<sup>th</sup> day of November, 1998.

The Phelps County Assessor appeared personally at the hearing and with counsel appointed by the District Court of Phelps County under the provisions of Neb. Rev. Stat. §77-5007.01(1998 Supp.). The Phelps County Board of Equalization ("County") appeared through counsel retained by the County for the purposes of this appeal. Gary W. Wall, the owner of the property the valuation of which is the subject of this appeal, neither filed an Answer nor appeared at the hearing.

During the hearing, the Commission took judicial notice of certain information, and each of the parties present was afforded the opportunity to present evidence and argument. Each of the parties present was also afforded the opportunity to cross-examine witnesses of the opposing party as required by law.

The Commission considered two preliminary motions made by the County. First, the Commission in essence overruled the Motion for Leave to File Additional Documents, as the subject documents were received without objection. The Commission also overruled the Motion for Summary Dismissal.

The Commission thereafter considered the merits of the appeals, which were consolidated. Neb. Rev. Stat. §77-5018 (1998 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**

### **A.**

#### **PROCEDURAL FINDINGS**

1. That the Phelps County Assessor ("Assessor") valued certain parcels of residential real property in the City of Holdrege for tax year 1998. That these parcels were either vacant or had improvements with a value of \$1,500 or less ("subject property.")
2. That the Phelps County Board of Equalization ("County"), on its own motion, reduced the assessed values of the subject properties by 25%.
3. That this action was not precipitated by protests filed by the owners of the subject properties.

4. That the County Assessor timely filed an appeal of that decision.

**B.**  
**SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS**

1. That the subclass of property is vacant residential real property within the City of Holdredge with an assessed value of \$5,000 or more and improvements of \$1,500 or less. That therefore, these parcels of real property constitute a class or subclass of property as defined in Title 316, Nebr. Admin. Code, Chapter 42, Reg. 008.02.
2. That the County had retained the services of an appraiser licensed by the State of Nebraska ("Appraiser") to assist in the valuation of real property within Phelps County for tax year 1998.
3. That the County paid approximately \$27,000 for certain valuation software and the assistance of the Appraiser in 1995.
4. That the Assessor is required to utilize professionally accepted mass appraisal practices. Neb. Rev. Stat. §77-112 (1998 Supp.).
5. That professionally accepted mass appraisal practices require that land be valued as if vacant and available for sale.
6. That with the assistance of the Appraiser, the Assessor determined that there were 4 market areas for residential real property within the City of Holdredge, Phelps County, Nebraska.
7. That the Assessor, with the assistance of the Appraiser, established per square foot values for the land component of residential real property assessments in Holdredge based on a market analysis. (E5).

8. That all residential land within the City of Holdredge was valued using these per square foot values for tax year 1998.
9. That in utilizing these values, the Assessor was performing her statutory duty to uniformly and proportionately value residential real property within the County for tax year 1998.
10. That no evidence was adduced at the hearing before the County or the hearing before the Commission to rebut or contradict the Appraiser's testimony regarding the determination of assessed values for the land component of residential real property within the City of Holdredge.
11. That the action of the County was, according to the testimony of one of the Board of Supervisors, based on conversations with "real estate people" regarding 8 or 9 parcels of vacant real property. That the owners of those parcels did not file protests challenging the assessed values as determined by the Assessor.
12. That no competent, credible evidence of actual or fair market value of the parcels comprising the subclass other than the testimony of the Appraiser and the Assessor was adduced at the hearing before the County Board or this Commission.
13. That the adjustment by the County did not address improved lots. These improved lots carried the same per square foot assessed valuations as did the subclass of vacant residential real property with an original assessed value of more than \$5,000 and improvements of \$1,500 or less.
14. That the adjustment by the County did not address vacant lots with an assessed value of less than \$5,000.

15. That the action of the County did not promote uniform and proportionate assessments, and in fact had the opposite effect.
16. That the removal by the Assessor of the historical, minimum 25% discount for vacant lots in the City of Holdredge for tax year 1998, based on the Appraiser's recommendation, resulted in an increase in value for vacant lots in the County. That this action was required by the Appraiser's market study.
17. That the decision of the County was unreasonable and arbitrary.
18. That therefore the assessed value of each parcel of the subclass as determined by the County for tax year 1998 is not supported by the evidence.

#### 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 the Phelps County Board of Equalization is an administrative board of review to pass upon the records, valuations, and conclusions of the assessor for the purpose of correcting errors and inequalities in valuations as fixed by the assessor, and the values placed thereon by such assessor are not conclusive. *See Speer v. Kratzenstein*, 143 Neb. 300, 315, 12 N. W. 2d 360, 363 (1943).

4. “Administrative bodies have only that authority specifically conferred upon them by statutes or by construction necessary to achieve the purpose of the relevant act.” *Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 554 N.W. 2d 778 (1996).
5. That the authority of the county board of equalization during the “protest” process which is described in Neb. Rev. Stat. §77-1502 (Reissue 1996) is limited. That board, pursuant to Neb. Rev. Stat. §77-1504 (Reissue 1996), “shall fairly and impartially equalize the value of all items of real property in the county. . . so that all real property is assessed uniformly and proportionately.” During this process, the board must correct and equalize *individual* discrepancies and inequalities within the county. (Emphasis added.) *AT&T Information Systems v. State Board of Equalization and Assessment*, 237 Neb. 591, 467 N.W.2d 55 (1991).
6. The county board of equalization, therefore, has no authority or jurisdiction to adjust values by class or subclass.
7. That the authority to make adjustments by class or subclass is specifically reserved to the Nebraska Tax Equalization and Review Commission. Neb. Rev. Stat. §77-5027 (1998 Supp.).
8. That therefore the Phelps County Board of Equalization had no jurisdiction to adjust the values of the subclass of vacant residential real property in the City of Holdredge, Phelps County, Nebraska, with a value of \$5,000 or more and \$1,500 or less of improvements.
9. That as a matter of law the Assessor has established that the decision of the County was unreasonable and arbitrary.

10. Further, that there is a presumption that the assessing official has performed his or her duties according to law. *See, State ex rel. Bee Building Co. v. Savage, 65 Neb. 714 (1902); Woods v. Lincoln Gas & Electric Co., 74 Neb. 526 (1905); Brown v. Douglas Co., 98 Neb. 299 (1915); Gamboni v. County of Otoe, 159 Neb. 417 (1954); Ahern v. Board of Equalization, 160 Neb. 709 (1955); Collier v. Logan County, 169 Neb. 1 (1959); Josten-Wilbert Vault Co. v. Board of Equalization, 179 Neb. 415 (1965).*
11. That “There is a presumption that a county 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 adduced on appeal to the contrary. From that point forward, 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.” *(Citations omitted). Forney v. Box Butte County Board of Equalization, 7 Neb. App. 417, 582 N. W. 2d 631 (1998).*
12. 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 Phelps County Board of Equalization which held that “All lots valued above \$5,000 which have not been adjusted due to other considerations, such as farmed and etc. . . . get a 25% reduction basked (sic) on the fact they are not readily marketable unless you can find someone who is willing to build on these lots . . .” (E4:6) was unreasonable and arbitrary.
13. That therefore the decision of the Phelps County Board of Equalization must be vacated and reversed.

**ORDER**

1. That the order of the Phelps County Board of Equalization reducing the subclass of residential real property consisting of lots with a value of \$5,000 or more and with improvements with a value of \$1,500 or less for tax year 1998 is vacated and reversed.
2. That the parcel of real property legally described as Parcel No. 1922.00 in the records of the Phelps County Assessor's Office, which is located in the City of Holdredge, Phelps County, Nebraska, shall be valued as determined by the County Assessor as follows:

Land	\$13, 255
Improvements	\$ 2, 910
Total	\$16, 165

3. That this decision, if no appeal is filed, shall be certified within thirty days to the Phelps County Treasurer, and the Phelps 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.

**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 15<sup>th</sup> day of December, 1998,**

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 23<sup>rd</sup> day of December, 1998.



  
\_\_\_\_\_  
Mark P. Reynolds, Chairman