

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

HERITAGE OF EMERSON, INC.,)

Appellant,)

v.)

DAKOTA COUNTY BOARD)
OF EQUALIZATION,)

Appellee.)

Case No. 97R-158

DOCKET ENTRY

The Commission called the above-captioned case for hearing on the merits in the City of Dakota City, Dakota County, Nebraska, on the 29th day of October, 1997, pursuant to a Notice of Hearing issued the 7th day of October, 1997.

Appellant appeared through the Secretary of the Corporation. Appellee appeared through counsel. During the hearing, the Commission took judicial notice of certain information, and each of the parties was allowed to present evidence and cross-examine witnesses of the opposing party. Thereafter the parties rested, and the Commission heard closing statements from the parties.

Neb. Rev. Stat. §77-5018 (Reissue 1996), as amended by 1997 Neb. Laws, L. B. 397 (1997 Session), 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, therefore, after hearing the evidence, receiving the exhibits and hearing argument, entered its Findings of Fact, Conclusions of Law, and a final order on the record. The substance of that action is as follows:

FINDINGS OF FACT

From the record, the Commission found and determined as follows:

- I. That Appellant is the owner of record of certain commercial real property as described in the petition in the instant case.
- II. That Appellant timely filed a protest of the assessed value of its property for tax year 1997.
- III. That the basis for the protest was valuation of building not supported by the cost approach.
- IV. That the County Assessor proposed valuing the property as follows:

Land	\$ 15,390
Improvements	\$662,910
Total	\$678,300
- V. That the Appellant requested an assessed value for tax purposes as follows:

Land	\$ -0-
Improvements	\$ -0-
Total	\$303,554
- VI. That the Appellee granted the protest in part, by reducing the total assessed value to \$595,000.
- VII. That Appellant thereafter timely filed an appeal of that decision to the Tax Equalization and Review Commission.
- VIII. That the parties stipulated that the actual value of the land is \$13,500.

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- IX. That the Taxpayer reasonably believed that the assessed value was determined using the cost approach.
- X. That this belief was supported by the stipulations made by the parties at the hearing.
- XI. That the parties stipulated that the Adjusted Replacement Cost New of the improvements to the subject property for tax year 1997 is \$953,258, based on the Marshal Valuation Service.
- XII. That the actual value of the Miscellaneous Improvements to the subject property is \$2,367.
- XIII. That the County used 60 years as the "economic life" of the subject property.
- XIV. That the County used 50 years as the "economic" life of comparable properties.
- XV. That therefore the appropriate "economic life" of the property is 50 years.
- XVI. That the parties stipulated that the actual age of the structure is 23 years, as of January 1, 1997.
- XVII. That therefore the appropriate depreciation factor for the subject property is 46 percent (46%) for physical deterioration.
- XVIII. That the record before the Commission demonstrates no other depreciation is appropriate.
- XIX. That therefore the Depreciated Replacement Cost New of the subject property is \$514,759.
- XX. That from the record before the Commission, the County does not retaliate against Taxpayers who file protests challenging the assessed value of the Taxpayer's property.
- XXI. That the value of the subject property for purposes of taxation has not been changed by the County since 1990.

XXII. That the assessed value of the subject property for tax year 1997 is not supported by the evidence adduced by Appellee.

XXIII. That evidence has been adduced to establish that the decision of the Appellee was unreasonable or arbitrary.

CONCLUSIONS OF LAW

- I. 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 Dakota County Board of Equalization which set the assessed value of the subject property for purposes of taxation at \$595,000 for tax year 1997 was both unreasonable and arbitrary.
- II. That the decision of the Dakota County Board of Equalization to deny Appellant's request to reduce the assessed valuation was both unreasonable and arbitrary.
- III. That therefore the decision of the Dakota County Board of Equalization must be reversed.

ORDER

- I. That the order of the Dakota County Board of Equalization setting the assessed value of the subject property for tax year 1997 at \$595,000 is reversed.
- II. That Appellants' real property shall be valued as follows for tax year 1997:

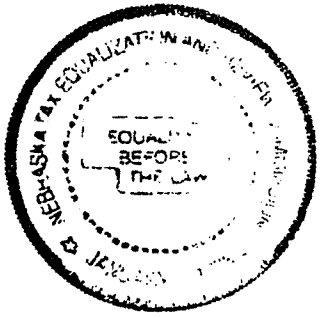
Land	\$ 13,500
Miscellaneous Improvements	\$ 2,367
Improvements	\$514,759
Total	\$530,626


III. That this decision, if no appeal is filed, shall be certified within thirty days to the Dakota County Treasurer, and the Dakota County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1997).

IV. That each party is to bear its own costs in this matter.

Dated this 5th day of November, 1997.

SEAL





Mark P. Reynolds, Chairman