

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

EDWARD L. BABBITT and
BARBARA A. BABBITT,

Appellants,

vs.

SARPY COUNTY BOARD OF
EQUALIZATION,

Appellee.

CASE NO. 98R-155

**DOCKET ENTRY
REVERSING DECISION OF
COUNTY**

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 3rd day of March, 1999, pursuant to a Notice of Hearing issued the 29th day of December, 1998.

Edward L. Babbitt and Barbara A. Babbitt ("Taxpayers") appeared personally at the hearing, and the Sarpy County Board of Equalization appeared through the 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 Taxpayers are the owners of record of certain residential rental property located at 2509 Hancock Street, in "Old Town Bellevue," in the City of Bellevue, Sarpy County, Nebraska ("subject property").
2. That the Sarpy County Assessor ("Assessor") proposed valuing the subject property for purposes of taxation at \$46,911 as of January 1, 1998 ("assessment date"):
3. That Taxpayers timely filed a protest of the proposed valuation, and requested that the subject property be valued at \$40,340. (E4:1).
4. That the basis of the protest was the allegation that the property was overvalued. (E4:1).
5. That the County denied the protest. (E4:2).
6. That thereafter, the Taxpayers timely filed an appeal of the County's decision to the Commission. (Appeal Form).

B. SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. That the County used the Ccst Approach methodology to value the subject property.
2. That critical factors under the Cost Approach Methodology which are particular to the subject property include the year built (1940), the "Effective Age" (15 years), and Depreciation (17.9%). (E18:2).

3. That the County was not able to articulate objective standards for the determination of effective age or depreciation factors which were used to value the subject property.
4. That from the record before the Commission, the effective age and depreciation factors attributed to the subject property were significantly understated.
5. That consequently the subject property is overvalued.
6. That the Taxpayers own 15 parcels of residential rental property in Douglas and Sarpy Counties.
7. That the Commissioners find that the Taxpayer's opinion of actual or fair market value of the subject property is \$40,340. (E3).
8. That subject property does not qualify for a VA/FHA loan due to age and condition.
9. That residential properties which do not qualify for VA/FHA loans sell for less than other residential properties due to a smaller pool of potential buyers.
10. That there is no evidence in the record before the Commission of the information upon which the Referee based his recommendation. That this information is required by law to be transmitted to the County Board. Neb. Rev. Stat. §77-1502.01 (Reissue 1996).
11. That the record, at best, demonstrates that the County Assessor or his deputy last inspected the subject property in 1995. There is no evidence in the record that the County Assessor or his deputy inspected the interior of the subject property or tried to inspect the interior of the subject property.

12. That based on the Property Tax Division's published Measures of Central Tendency for Sarpy County for tax year 1998, the record demonstrates that lower priced houses in the \$20,000 to \$50,000 range bear an assessed value higher than actual or fair market value. That the subject property falls within this range of values.
13. That from the record before it, the Commission finds and determines that the actual or fair market value of the subject property as of the assessment date was \$40,340.
14. That therefore the assessed value of the subject property for tax year 1998 as determined by the County for each of the property is not supported by the evidence.
15. That sufficient evidence has been adduced to establish that the decision of the County was unreasonable and arbitrary.
16. That therefore the decision of the County must be reversed.

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 an owner who is familiar with his property and knows its worth is permitted to testify as to its value, and this testimony constitutes competent evidence of the actual or fair market value of the property. *U. S. Ecology v. Boyd Cty. Bd. Of Equalization*, 2565 Neb. 7 (1999).
5. That "It is well established that the value of the opinion of an expert witness is no stronger than the facts upon which it is based." *Bottorf v. Clay Cty. Bd. Of Equal.*, 7 Neb. App. 162, 167 (1998).
6. That the Nebraska Supreme Court has determined that "(w)here the county assessor does not act upon his own information, or does not make a personal inspection of the property, any presumption as to the validity of the official assessment does not obtain." *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 580, 144 N.W. 2d 161, 169 (1966).
7. 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).
8. 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).

9. That as a matter of law the Taxpayers have met their burden of proof as required by *Kawasaki Motors v. Lancaster Cty. Bd. Of Equal.*, 7 Neb. App. 655 (1998).
10. 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 for the subject property in the amount of \$46,911 for tax year 1998 was both unreasonable and arbitrary.
11. That therefore the decision of the Sarpy County Board of Equalization must be vacated and reversed.

ORDER

1. That the order of the Sarpy County Board of Equalization setting the assessed value of the subject property for tax year 1998 is vacated and reversed.
2. That Taxpayers' residential real property located at 2509 Hancock Street, in the City of Bellevue, Sarpy County, Nebraska, shall be valued as follows for tax year 1998:


Land	\$10,340
Improvements	\$30,000
Total	\$40,340
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 3rd day of March, 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 17th day of March, 1999.





Mark P. Reynolds, Chairman