



## NATURE OF THE CASE

A. J. and Lynda H. Scribante ("Taxpayers") owns certain residential real property located in the City of Omaha, Douglas County, Nebraska. Taxpayers filed a protest with the Douglas County Board of Equalization ("County") alleging that

"the assessed valuation exceeds the valuation of other similar property. This property is not valued at the same standard of value as other similar property. There is a lack of proportionate and uniform valuation regarding this property, which results in a lack of uniformity and equality as required by law."

(Exhibit 14, p. 3.) By way of relief, Taxpayers requested that the proposed 1996 valuation of \$1,100,000, be reduced to \$619,000. County denied the protest, from which decision Taxpayer appeals.

## DUTIES OF THE PARTIES

A taxpayer who is dissatisfied with the county assessor's determination of assessed value of real property must file a written protest with County. Neb. Rev. Stat. §77-1502 (Reissue 1996).

A county board of equalization must, between June 1 and July 25 of each year, fairly and impartially equalize the values of all items of real property in the county "except agricultural and horticultural land . . ." so that all real property is assessed uniformly and proportionately. Neb. Rev. Stat. §77-1504 (Reissue 1996).

"For purposes of equalization of the valuation of any protested real property, the county board of equalization shall make its adjustment so that the value of the protested property compares to the average level of value of the class or subclass of property in which the protested property is categorized." Neb. Rev. Stat. §77-1504 (Reissue 1996).

## ANALYSIS

### I.

#### Overview

Taxpayer's appeal from County includes the Appeal Form required by Title 442 Nebraska Administrative Code, Chapter 5, Rule 001, a two-page document entitled "Reasons for Appeal," and five exhibits which were incorporated by reference into the "Reasons for Appeal." From this information Taxpayers' basis for the appeal may be summarized as an allegation that there is a lack of uniformity in assessing property in the Fairacres neighborhood of the City of Omaha in violation of law.

In order to prevail on their allegation Taxpayers must satisfy the requirements of the Nebraska Supreme Court case *Kearney Convention Center v. Buffalo County*, 216 Neb. 292, 344 N.W.2d 620 (1984). Those requirements may be summarized as follows:

1. The Appellant must have information which possesses at least an indicia of credibility and which establishes that there is a lack of equalization of property which is
  - of the same class or subclass as Appellant's, and,
  - similar (i.e., comparable) to Appellant's property, and,
  - which is located within the same "Market Area" within a county as Appellant's, and,
2. The Appellant must have presented the issue to the County Board of Equalization, and,
3. The County Board of Equalization, in light of that information, must be under a duty to act on the presented information at the time the information was presented.
4. The Appellant must demonstrate that the County Board of Equalization failed to consider the information.
5. The Appellant must demonstrate that the County Board of Equalization failed to take any action regarding the information.

6. The Appellant must demonstrate that the failure of the County Board of Equalization to investigate or to take any action was arbitrary and unreasonable.

The Commission therefore evaluates Taxpayers' allegations in light of this test.

## I. EVIDENCE PRESENTED

The Commission, without objection from either party, took judicial notice of a number of documents at the beginning of the hearing. One of those documents was the "Nebraska Department of Revenue statistics required by section 77-1327(6), R. S. Supp. 1995." That document establishes that the "level of value" for residential property within Douglas County for 1996 was 92%. The "Coefficient of Dispersion" was 5.77, and the "Price Related Differential" was 100.91.

Neb. Rev. Stat. §77-506 (Reissue 1996) states that for "non-agricultural real property, the acceptable range shall be from nine-two percent to one hundred percent of actual value of nonagricultural real property." The Commission, in General Order Number 6, stated that:

"Assessment practices of the counties and the state (for centrally assessed property) shall be evaluated through the use of the Median of the appropriate assessment/sales ratio . . . The assessment/sales ratio indicates the level of value of the properties being studied. . . The I.A.A.O. (International Association of Assessing Officers) Assessment/Sales definition is . . . the ratio between a property's appraised or assessed value and its estimated market value. The ratio study measures and evaluates the accuracy and uniformity of the values.

"The I.A.A.O. Price Related Differential definition is adopted by the Tax Equalization and Review Commission. That definition is: *The Price Related Differential indicates assessment bias and inequity between lower valued properties and higher valued properties . . .* The acceptable **range** for Price Related Differential shall be **.98 to 1.03 . . .**" (Emphasis in original).

"The I.A.A.O. definition of the Coefficient of Dispersion is adopted by the Tax Equalization and Review Commission. That definition is: *The Coefficient of Dispersion is the average absolute deviation from the median states*

*as a percentage . . . the acceptable ranges for the COD shall be . . . For residential real property 15.0 or less. . .”*

The Commission's General Order Number 6 (adopted December 1996) also contained a definition of "market area" which is applicable here:

"A market area is a geographical area with sales of properties that are similarly influenced by environmental (physical), governmental, social and economic factors. . . The boundaries may be natural, political or man made. . . Natural boundaries may be rivers, lakes, ravines and undeveloped areas. . . Political boundaries may be city limits, school districts, zoning or assessment districts. . . Man-made boundaries may be streets, highways, freeways, railroad tracks and major utility rights-of-way. . . when sales analyses indicated different levels of value for similar properties located in different areas within a jurisdiction, designating a market area may be appropriate. . . ”

(General Order No. 6, adopted December 20, 1996.) The Commission also considered other information regarding the appraisal practices of County. It took judicial notice of the Final Residential Calculation Breakdown for Douglas County for 1996. The Calculation, also prepared by the Property Tax Division of the Department of Revenue, shows that for the City of Omaha, the Median of the Assessment/Sales Ratio is 91.33%. When considered by "Sale Price Range," thirty one sales were reported county wide with a sale price of \$500,000 to \$999,999. The median Assessment/Sales Ratio for those properties was 89.98%.

If the information contained in these reports is representative of the appraisal practices of the Douglas County, then the quality of appraisal practices for tax year 1996 would be acceptable, and Taxpayer's argument would appear unfounded. These statistics, however, may not be representative. Assessment/sales ratios are, by definition, useful when considering properties which have been sold. However, no statistical tool was in place in 1996, or for that matter now, which measure the quality of appraisal practices for unsold properties. Furthermore, although 11,083 sales were reported by the Department of Revenue for 1996 in Douglas County, no information is provided to indicate the number of qualified sales of residential real property. In other words, were there more than 11,083 sales for the period within which sales were analyzed? The question is more than hypothetical. The "Sales Data Base" for residential property for tax year 1996, under the rulings of the State Board of Equalization and Assessment, were all qualified sales for the period January 1, 1995 through June 30, 1996. Therefore, if not all qualified sales were used as part of the database, the indicated level of value may not be representative. Finally, the

report does not include any information regarding sales of homes worth more than \$1 million. Therefore, there is no information which is provided by the State which establishes the indicated level of value for homes with a fair market value of one million dollars or more. For these reasons the question of "representativeness" of the indicated level of value for residential properties in one million dollar or more subclass of property is at issue.

The issue is significant when considering the market area at issue here. County admitted that the Fairacres neighborhood is a well-defined market area. That area consists of homes with an assessed value of at least \$500,000, and in some cases more than one million dollars. Taxpayers' Exhibit 2 (a letter to the Douglas County Assessor dated September 21, 1995) attempted to establish that for these homes, there were inequalities in assessed values. Attached to that letter is a list of "comparables" which, if correct, establish that for the 13 properties listed, the assessed value per square foot ranges from a low \$32.64 to a high of \$61.34. However, the information presented in the Exhibit is limited to the address, valuation, number of square feet, and valuation per square foot. From this exhibit alone, it cannot be determined that the listed properties are in fact similar or comparable properties to the subject property.

This information is critical to the analysis of Taxpayer's request for equalization under the *Kearney Convention Center* case set forth above. "Similar properties" share "overall quality, architectural attractiveness, age, size (for example, square footage, stories, number of units, and number of bedrooms and baths), amenities (for example, special purpose rooms, garage, swimming pool, and parking), functional utility (for example, architecture and appearance, layout, and equipment) and physical condition (for example, physical deterioration, maintenance, and modernization, including remodeling and additions). *Property Assessment Valuation*, Second Edition, p. 98. The element of "comparability" is essential to professionally accepted appraisal practices. For example, the proper application of the "Sales Comparison Approach" requires that evidence be adduced to establish that the properties are in fact "similar" (or more commonly "comparable properties" or "comparables"), since the approach is a tool used "to estimate value by comparing the subject property to similar properties that have recently sold." *Property Assessment Valuation*, Second Edition, p. 97. If the properties listed in Exhibit 2 are in fact "comparables," then Taxpayers' assessed value of \$160.77 is grossly excessive and they are entitled to relief. As noted above, however, Exhibit 2 standing alone does not provide the information necessary to establish that the listed properties are in fact "comparables."

Taxpayers did, however, provide other exhibits which list information essential to an informed determination of the issues. Exhibit 3, for example, is a thirty-page document. The exhibit includes a plat map of the Fairacres neighborhood which

shows the location of the alleged "comparables;" a photograph of the subject property and twelve alleged "comparables;" the year each property was constructed; information regarding the year in which the property was last remodeled; the number of finished square feet; the lot size; and assessed valuation data, which includes the assessed value per square foot. The last pages of the Exhibit display, in a "bar graph" format: a comparison of per square foot assessed valuations; a comparison of per square foot assessed valuations of land; and a comparison of the per square foot assessed valuations of both improvements and land.

This information was obtained from records of Douglas County. Therefore, it has at least an indicia of credibility. And it was presented to the County during the protest hearing according to the testimony of Appellant. During this period of time the County Board of Equalization was under a duty to equalize assessments. Neb. Rev. Stat. §77-1504 (Reissue 1996). The evidence presented establishes that the County took no action based on the information. Therefore the only issue remaining is whether the information presented was sufficient to require action by County. In other words, was the quality and quantity of the information presented to County of such a nature as to require the County to act?

## II.

### The Evidence

#### A.

#### Value of the Improvements

The Commission evaluates the evidence presented utilizing its experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016 (5) (Reissue 1996). The evidence presented in Exhibit 3 was obtained from records of the County. It therefore has an indicia of credibility. Furthermore, that information was not rebutted by the County. The information presented contained twelve properties which were alleged to be "comparables" to the subject property. All of these "comparables" were drawn exclusively from the Fairacres subdivision. Ten of the properties were within a one block radius of the subject property.

The unadjusted assessed value per square foot of the improvements reported by Taxpayers' in Exhibit 3 (using the 1996 assessed values according to the County's records) when arrayed from lowest to highest, are as follows:

House No.	12	\$84.38	
	11	\$93.41	
	10	\$93.45	
	9	\$93.55	
	8	\$94.24	
	7	\$96.18	
	6	\$98.98	
	5	\$104.94	
	13	\$113.91	
	4	\$116.38	
	3	\$139.49	
	1	\$179.79	Subject Property
	2	\$187.42	

The median of this array is an assessed value of \$98.98 per square of improvement. Almost half of the properties in the entire Fairacres Subdivision are represented. Under these limited circumstances, the Commission would ordinarily conclude that Taxpayers' have failed to meet their burden. However, Taxpayers' have established that the reason for the disparity in assessments is attributable to one fact: assessments for property in the subdivision are only reviewed when a building permit is taken out, the property is sold, or the State Board of Equalization and Assessment has directed an order affecting valuations. (Appeal Form, Exhibit "D").

Nebraska state statutes require that "all real property in this state, not expressly exempt therefrom, shall be subject to taxation and shall be valued at its actual value." Neb. Rev. Stat. §77-201 (Reissue 1996). The actual value is to be determined as of January 1, at 12:01 a.m.. Neb. Rev. Stat. §77-1301 (Reissue 1996).

It is, of course, the duty of the assessor to determine this value. The county assessor has the duty to supervise and direct the assessment of all of the property in the county. Neb. Rev. Stat. §77-1311 (Reissue 1996). The actual value of the real property "shall mean the market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal techniques, including, but not limited to: (a) Comparison with sales of real property of known or recognized value, taking into account location, zoning, and current functional use; . . ." Neb. Rev. Stat. §77-112 (Reissue 1996). The assessor's objective in the sales comparison approach is to estimate, by interpreting data on comparable sales, the probable price that the property being appraised should bring in the market. *Property Assessment Valuation*, Second Edition, p. 103.

This objective must be considered within the formal definition of "market value" as that term is used in appraisal practices. *Property Assessment Valuation*,

Second Edition defines "market value" as:

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date. . . ."

(p. 18). In this case the expert witness retained by Taxpayers' testified that the market for residential property in the Fairacres subdivision has been increasing. This opinion is supported by the increases in valuations which have occurred as a result of sales of residential property within the subdivision since 1968, as shown by the appraisal histories in Exhibits 11 and 12. In spite of this fact, however, the county only revalued the property when a sale occurred, a building permit was issued, or the State Board of Equalization issued an order affecting valuations. Given these facts, the Commission cannot conclude that the disparities in assessments in the Fairacres subdivision occur as a result of normal variations which arise through the course of professionally accepted appraisal practices. Finally, County's evidence does nothing to disprove this conclusion.

When the evidence presented is evaluated by the Commission, however, the information contained in Exhibit 3 has a significant defect. Of the twelve properties listed as "comparables," only the three qualify as true "comparables." The test for "comparable properties" is set forth in *Property Assessment Valuation, Second Edition*, at page 98. In order to qualify as "comparables," professionally accepted appraisal techniques require that the offered properties be similar as to:

"Overall quality, architectural attractiveness, age, size (for example, square footage . . . ), amenities, . . . functional utility. . . physical condition. . . ."

The subject property is a two-story home with a brick exterior which was built in 1917. There are 6,118 finished square feet of living area above grade, and the house sits on a lot which is 48,300 square feet in size. According to County's Exhibit 11, the home was last remodeled in 1988. The house is assessed at \$179.79 per square foot for both land and improvements. The information provided also establishes the assessment history of the subject property. According to County's Exhibit 12, the assessment history only covers the period of 1991 to 1994. That history indicates that the property was assessed at \$612,800 in 1991, was purchased in 1991, for \$1,297,000, and the assessed value was thereafter increased to

\$1,000,000 in 1992. Finally, pursuant to an order of the State Board of Equalization and Assessment, the assessed value was increased by 10% in 1994.

Taxpayers' contend that the twelve properties listed in Exhibit 3 qualify as "comparables." Some in fact do qualify. The house listed as Number 2 in Exhibit 3 is also a two-story home with a brick exterior which was built in 1937. There are 6,339 finished square feet of living area above grade, and the house sits on a lot which is 38,114 square feet in size. This house is assessed at \$139.49 per square foot for both land and improvements. The house was last remodeled in 1979. The assessment history for this property dates back to 1980. In that year the property was appraised at \$258,800. The value was not changed until 1985, when the value was increased to \$540,000. The value was increased to \$600,000 in 1988. In 1994, the assessed value of the property was increased to \$884,200, in response to an order of the State Board of Equalization and Assessment (10%) and another unidentified factor.

The house listed as Number 5 in Exhibit 3 is also a two-story home with a brick exterior which was built in 1911. There are 5,652 finished square feet of living area above grade, and the house sits on a lot which is 107,880 square feet in size. According to Exhibit 3, Taxpayers' report that the assessed valuation for this property is \$104.94 per square foot. There is no remodeling information reported in Exhibit 3. Exhibit 11 however, contains a copy of the property record which establishes that there were apparently substantial changes to the property in 1988 and 1989, since a building permit was issued. No other details regarding those improvements are available. County's Exhibit 12 confirms that the property is assessed for 1996 at \$593,100, or \$104.94 per square foot for both land and improvements.

The house listed as Number 8 in Exhibit 3 is a two-story brick home with 5,359 square feet of finished living area above grade. This house was constructed in 1917, (as was the subject property). The house sits on a lot which is 58,380 square feet in size. No remodeling data is available for the property. The assessed value is \$94.84 per square foot, including both land and improvements.

The remaining properties listed have substantial differences in the number of finished square feet when compared to the subject property (Houses 3, 4, 6, 7, 9, 10, 11, and 12). House number 13 was built in 1982, and is therefore substantially newer than the subject property (built in 1917), and most of the other homes listed. Finally, there are substantial differences in architectural style between some of the houses listed and the subject property. The problem here is that professionally accepted appraisal practices require adjustments between the comparables and the subject property for different features. No evidence was presented to the Commission regarding the nature of those necessary adjustments. The nature of the adjustments must be made known in order to accurately compare the assessed values.

Without this necessary information, the assessed values of these properties here cannot be directly compared to the subject property.

The evidence provided by the County suffers from the same defect. Exhibit 11 is titled "Subject and comparables by sale," and contains property record cards for four properties: the subject and three others. The total assessed valuations for the three "comparables" are \$437,800, \$1,939,000, and \$1,266,000. The first and second properties are less than one-half the assessed value of the subject, and almost twice the assessed value of the subject, respectively. These assessed valuations establish that there are significant differences between these two properties and the subject property. No explanation of the adjustments necessary to appropriately compare with the subject property are available. The last property was extensively remodeled in 1994 and 1995. It was sold in November of 1993. At the time of the sale the assessed value was \$937,200. The assessed value increased by 26%, to \$1,266,000 as a result of the sale and the extensive remodeling.

County contends that these three properties are "comparable" properties, and that the values reported should support the value of Taxpayers' property. However, the exact opposite is true. Two of the properties do not meet the requirements of serving as a "comparable" property under professionally accepted practices, and no information was provided regarding the nature and amount of adjustments for any of the three properties.

Exhibit 12 offered by the County is entitled "Submitted Comparables With Indication of Value by Sale or Listing," and consists of property record cards for five properties. The Commission notes first that the listed value of a property is not an indication of value. Value is "The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, . . ." (*Property Assessment Valuation, Second Edition*, p. 18.), not the price the seller would like to receive for the property. Second, these four properties are also listed by Taxpayers in Exhibit 3, as "comparables" number 8, 5, 2, 3 and 4. For the reasons set forth above, 3 and 4 are not comparable to the subject property.

County also offered Exhibit 13, which contains the property record cards for "Submitted Comps - No Sale History." The assessed valuation per square foot for these properties (also listed by Taxpayers) is as follows:

<u>Land</u>	<u>Buildings</u>	<u>Total</u>	<u># Sq Ft. (Imp.)</u>	<u>Asses. Value/Sq Ft (Imp.)</u>
\$138,800	\$631,200	\$770,000	4,726	\$133.56
\$ 53,600	\$524,400	\$578,000	3,950	\$132.76
\$ 65,900	\$388,400	\$454,300	4,296	\$ 90.41
\$ 57,400	\$309,700	\$367,100	3,520	\$ 87.98

The value of the improvements of the subject property, according to this evidence, is between \$87.98 and \$133.56 per finished square foot of living area. However, these properties are the same properties listed in Exhibit 3, as houses 12, 13, 9, and 7. For the reasons set forth above, these properties are not "comparable" to the subject property, and therefore cannot be used to support the assessed valuation of the subject property.

The evidence presented, as noted above, establishes that at least until 1996, the county only revalued the property when a sale occurred, a building permit was issued, or the State Board of Equalization intervened. The Taxpayers have therefore, established that the properties in the subdivision have been systematically undervalued. However, as noted above, there is no information before the Commission which indicates what the level of value is for homes in the Fairacres Subdivision. Without that information, the Commission cannot determine whether the provisions of the *Kearney Convention Center* case are triggered.

Since, however, properties in the subdivision are only revalued when property is sold, a building permit is issued, or the State Board of Equalization and Assessment acts, the evidence clearly establishes that the subject property, since it was purchased by Taxpayers in 1991, is assessed at a higher level than similarly situated property. This fact is demonstrated by the assessed values of the "comparables" properties offered by both Taxpayers' and the County. Those houses, identified as numbers 2, 5, and 8 of Exhibit 3, and also shown in Exhibit 12, have assessed values per square foot as follows:

<u>Buildings</u>	<u># Sq Ft. (Imp.)</u>	<u>Asses. Value/Sq Ft (Imp.)</u>
\$818,500	6,229	\$129.12
\$494,100	5,652	\$ 87.42
\$419,200	5,369	\$ 78.08

From this evidence, it is clear that Taxpayers' improvements are over assessed. Given the "comparables" presented by both Taxpayers' and County, the maximum assessed value per square foot of the improvements should be no more than \$129.12, for a total of \$789,956.

**B.**

**Value of the Land**

County's determination of the value of the land of the subject property however, is supported by the evidence. Taxpayers' evidence as to the value of the land per square foot which is contained in Exhibit 3, when arrayed from lowest to

highest, (using County's assessed values for 1996) is as follows:

<u>House</u>	<u>Size of Lot (In Sq. Ft.)</u>	<u>Assessed Value Per Square Foot</u>
3	172,175	\$0.766
5	107,880	\$0.918
12	142,140	\$0.976
6	64,000	\$1.341
8	58,380	\$1.490
13	59,500	\$1.459
9	39,032	\$1.688
2	38,114	\$1.723
Subject	48,300	\$1.766
10	35,644	\$1.900
11	28,314	\$2.240
7	17,820	\$3.220
4	13,780	\$3.740

This array demonstrates that as the amount of land increases, the price per square foot decreases. The lots for houses 3, 5, and 12, are from 2 to 3 times the size of the Taxpayers' lot. They therefore cannot be considered "comparable." Furthermore, the lots for houses 4, 7, and 11, are from one-third to almost one-half the size of Taxpayers' lot, and cannot be considered "comparable." With those lots excluded, the array appears as follows:

<u>House</u>	<u>Size of Lot (In Sq. Ft.)</u>	<u>Assessed Value Per Square Foot</u>
6	64,000	\$1.341
13	59,500	\$1.459
8	58,380	\$1.490
9	39,032	\$1.688
2	38,114	\$1.723
Subject	48,300	\$1.766
10	35,644	\$1.900

County's evidence, therefore, does support a value of the land of the subject property of \$85,300. The value of the improvements of the subject property is, as noted above, at most \$129.12 per finished square foot of living area. Taxpayers' home has 6,118 square fee, resulting in a value for assessment purposes of \$789,956. The total value of the land and improvements of the subject property, according to

County's evidence, cannot exceed \$875,256.

### FINDINGS OF FACT

The Commission, in determining cases, is bound to consider only that evidence which has been made a part of the record before it. No other information or evidence may be considered. Neb. Rev. Stat. §77-5016 (3) (Reissue 1996). The Commission may, however, evaluate the evidence presented utilizing its experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016 (5) (Reissue 1996).

From the pleadings and the evidence the Commission finds and determines as follows:

1. Taxpayers owns certain residential real property legally described as Lot 57, Fairacres Addition to the City of Omaha, Douglas County, Nebraska, except the irregular South 181 east 50 feet and the irregular North 24 east 75 feet, more commonly known as 401 Fairacres Road.
2. Taxpayers timely protested the issues of proposed valuation and equalization of the subject property for tax year 1996.
3. County denied the protest.
4. The record does not support County's action in denying the protest.
5. Taxpayers' did timely filed an appeal of County's action to the Tax Equalization and Review Commission.
6. The evidence establishes that the value of the improvements to Taxpayers' property is at most \$129.12 per finished square foot.
7. The evidence establishes supports a value of \$85,300 for the land.
8. County's action in denying the protest was both arbitrary and unreasonable.

## JURISDICTION

Jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (Reissue 1996), as amended by L.B. 397 (1997 Session).

### STANDARD OF REVIEW ANALYSIS

The Tax Equalization and Review Commission is not a court. The Commission was created pursuant to state law to provide for an accessible and affordable system of review of valuation decisions. Under such circumstances, applying the standard devised by the Nebraska Supreme Court to the Commission would be presumptuous and ill-advised.

Therefore, the Commission must adopt a standard applicable to cases it hears and decides. This standard must be in keeping with the precept that tax laws are to be strictly construed, and construed in the light most favorable to the taxpayer. *See, e.g., Nebraska Annual Conference of the United Methodist Church v. Scotts Bluff County Board of Equalization*, 243 Neb. 412, 416, 499 N.W.2d. 543, 547 (1993), and *Sioux City and Pacific R.R. v. Washington County*, 3 Neb. 30, 32 (1873). In determining that standard, resort must be made to the language of the statute. The Nebraska Supreme Court has often held that statutory construction is a simple task. The Court has held "In construing a statute, it is presumed that the Legislature intended a sensible rather than an absurd result. . . Statutory language is to be given its plain and ordinary meaning. . ." *Metropolitan Utilities Dist. v. Twin Platte Natural Resources Dist.*, 250 Neb. 442, 451, 550 N.W.2d 907, 913 (1996).

Therefore, the standard is that set forth in the statute. The word "arbitrary" is defined in the Webster's New Collegiate Dictionary (1981) as "arising from will or caprice; selected at random or without reason;" and "unreasonable" is defined as "not governed by or acting according to reason, not conformable to reason; absurd; exceeding the bounds of reason or moderation." Under these definitions, the Commission must affirm the decision of a county board of equalization unless that decision was determined by will or caprice or selected at random; or if the board's decision was not governed by reason; was absurd; or exceeded the bounds of reason or moderation.

## CONCLUSIONS OF LAW

### I.

#### Lack of Uniformity and Proportionality

Taxpayers' evidence establishes that in the Fairacres Subdivision, there is a lack of uniformity and proportionality. Furthermore, the evidence establishes that this lack of uniformity and proportionality arises from the fact that the County reappraises property in the Subdivision when the property is sold, when a building permit is issued, or when the State intervenes. There was testimony which indicates that the subdivision will be reappraised in its entirety in 1997. If such a reappraisal is undertaken, the lack of uniformity and proportionality will be addressed. However, Taxpayers' taxes for 1996 are based on the conditions then existing. A reappraisal in 1997 will do nothing to alleviate the disparate treatment of all taxpayers in the subdivision in 1996.

Under these circumstances, counties may wish to exercise their authority set forth in Neb. Rev. Stat. §77-1504. That statute provides:

“For purposes of equalization of the valuation of any protested real property, the county board of equalization shall make its adjustment so that the value of the protested property compares to the average level of value of the class or subclass of property in which the protested property is categorized.” Neb. Rev. Stat. §77-1504 (Reissue 1996).

This statute was enacted in response to the “Property Tax Crisis” which arose in light of the *Mapco* decisions of the Nebraska Supreme Court. This statute provides counties with a certain level of “protection” from actions such as the one before the Commission.

The Commission must, and hereby does, conclude as a matter of law that the actions of the County in denying Taxpayers' protest was both arbitrary and unreasonable.

### II.

#### REQUEST FOR EQUALIZATION

Taxpayer's request for equalization with the property with the lower assessed property is based on the decision reported in *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984). In

that case the Supreme Court held that where "the discrepancy was not the result of an error of judgment but was a deliberate and intentional discrimination systematically applied" the Taxpayers right to relief is clear. *Supra* at 299, 624. That Court summarized that right to relief as follows: "the right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law." *Supra* at 304, 626.

Taxpayer here adduced evidence on two separate occasions that there was property within the county which, based on information obtained from the County Assessor's Office, was assessed at a lower level than Taxpayer's property. Although presented with this information, County chose not to act. County could have investigated the reported problems and taken appropriate action. Such action would have removed any possibility of a successful appeal by Taxpayer. County chose to ignore the information presented by Taxpayer, in spite of its statutory duty to equalize values during the protest process. This action by County was arbitrary and unreasonable under the standard enunciated by the Commission.

## II. REQUIRED RESPONSE TO COUNTY'S INACTION

To summarize, Taxpayers adduced specific information regarding poor appraisal practices within the Fairacres Subdivision of the City of Omaha, Douglas County, Nebraska. The source of that information was the records of the County. This information was presented to the County on at least two occasions. In spite of these efforts by Taxpayer, County failed to act in disregard of its statutory duty to do so. The Commission is therefore required to take corrective action.

The Commission is obliged to "make such orders as are appropriate for resolving the case . . ." Neb. Rev. Stat. §77-5017 (Reissue 1996). Since County's action was both unreasonable and arbitrary, the provisions of *Kearney Convention Center* case are triggered. As Taxpayers' note in their appeal, that case holds

"This Court holds that the right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the

standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.”

*Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 344 N.W.2d 620 (1984).

In order to determine the percentage level of value at which others in the subdivision are assessed, Taxpayers' presented the bar graph in Exhibit 3 entitled "Comparison of Per Sq. Ft. Of Assessed Valuation of Total Improvements and Land - 1995." This graph, however, does not establish the **percentage of value** at which those properties are assessed. That graph merely establishes that the subject property is over assessed. Such information does not provide the Commission with information upon which an order, as contemplated in the *Kearney Convention Center* case, can be issued.

The Commission must, in issuing orders, be able to support those orders based on the record. Neb. Rev. Stat. §77-5018 (Reissue 1996). Neither party provided credible evidence to establish the level of value in Fairacres Subdivision. Furthermore, the Final Residential Profile does not provide this information, as noted above. Under these circumstances the Commission cannot grant the relief requested under the equalization theory of the *Kearney Convention Center* case.

### III. Relief Granted

The evidence from the County, however, establishes that the property is assessed at a higher level than comparable property. From the evidence presented by the County, at most the property should have been assessed at \$129.12 per square foot of finished living area. The value of land, \$85,300, is correct for tax year 1996. (Exhibit 13, Property Number 1, p. 1). The property should therefore be assessed in the amount of \$875,256, for tax year 1996.

### IV. Other Requested Relief

Taxpayer's appeal contains two prayers for relief as follows:

1. "we are entitled to be valued at the same standard of value as our neighbors. . . The valuation of our home should therefore be

reduced from \$1,100,000 to \$619,000 until such time as the Assessor revalues our entire neighborhood and uses the same "standard of value" on everyone's houses. We understand and agree that may result in the valuation of all of our houses being raised; as long as that truly reflects actual value and is applied uniformly and proportionately, we are in full agreement. " (Appeal Form at p. 2)

2. "Since our house has been unfairly and unconstitutionally overvalued since 1992 when compared to our neighbors, we ask this Commission to not only order a reduction in value until such time as our entire neighborhood is revalued in a uniform manner, but also to give us a credit on our real estate taxes reflecting the result of the last four years of unfair and illegal valuation of our home."

The Commission declines to grant the relief requested in Paragraph 1 for the reason that (1) the Taxpayer failed to provide information regarding the actual value of their property, against which the level of assessment can be determined; and (2) Taxpayer failed to provide information regarding the actual value of the comparables, against which the level of assessment of those properties can be determined. The Commission furthermore declines to grant the relief requested in Paragraph 2 for the following reasons: (1) Taxpayers' have not applied to the County Board of Equalization for a refund under the applicable statutes; (2) the question was not presented to the County Board of Equalization, and is therefore premature; and, (3) Taxpayers' did not previously challenge the assessment, which the Commission notes from Exhibit 11, has been unchanged since 1994.

## VI. Conclusion

The Commission must, for the reasons set forth above, and pursuant to Neb. Rev. Stat. §77-1510 (Reissue 1996), hereby does conclude as a matter of law that the action of the Douglas County Board of Equalization should be reversed, and the relief described above be granted.

ORDER

IT IS, THEREFORE, ORDERED as follows:

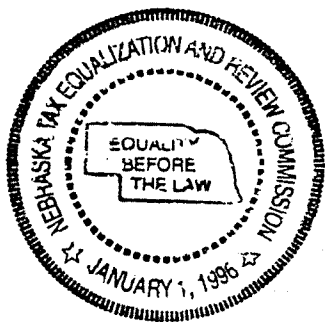
1. That the decision of the Douglas County Board of Equalization which denied Taxpayers' protest is reversed.
2. That Taxpayers' residential real property known as Lot 57, Fairacres Addition, an Addition to the City of Omaha, Douglas County, Nebraska, more commonly known as 401 Fairacres Road, shall be valued as follows for tax year 1996:

Land	\$ 85,300
Improvements	\$789,956
Total	\$875,256

3. That this decision, if no appeal is filed, shall be certified within thirty days to the Douglas County Treasurer, and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
4. That each party is to bear its own costs in this matter

IT IS SO ORDERED.

Dated this 15<sup>th</sup> day of April, 1997.



Seal

*Mark P. Reynolds*  
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 Mark P. Reynolds, Chairman

*Janet L. Edwards*  
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 Janet L. Edwards, Commissioner

*Robert L. Hans*  
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 Robert L. Hans, Commissioner