

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

CHATEAU PROPERTIES, LLC,                    )  
  )  
  ) Appellant,                                    )  
  )  
vs.    )  
  )  
LANCASTER COUNTY BOARD OF                )  
BOARD OF EQUALIZATION,                    )  
  )  
  ) Appellee                                    )  
  )

CASE NO. 97R-207

**FINDINGS AND ORDERS**

Filed October 20, 1998

Appearances:

For the Appellant:                    Ward F. Hoppe  
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For the Appellee:                    Michael E. Thew  
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Before: Commissioners Edwards, Hans, and Reynolds

Reynolds, Chairman, for the Commission:

**SUMMARY OF DECISION**

The Commission affirms decision of the Lancaster County Board of Equalization, and denies Taxpayer's request for a reduction in the assessed value of the subject property.

## NATURE OF THE CASE

Chateau Properties, L. L. C., ("Taxpayer") is the owner of certain multi-family real property located in the City of Lincoln, Lancaster County, Nebraska. The Lancaster County Assessor ("Assessor") determined the actual or fair market value of the subject property for tax year 1997 to be \$6,439,300. Taxpayer alleged that the property was overvalued by the Assessor and that the assessed value was not equalized with the assessed values of comparable properties. (E49, 22; E49, 3). Taxpayer therefore requested that the Lancaster County Board of Equalization ("County") find that the assessed value of the subject property to be \$5,878,200 (E49, 22; E49, 2). The County, granted the protest in part, without identifying whether the basis for its decision was equalization or valuation or both. The County determined the assessed value of the subject property to be \$6,169,500, from which decision Taxpayer appeals. (E49, 103).

## EVIDENCE BEFORE THE COMMISSION

Judicial notice was taken, without objection, of the pleadings and evidence in each of the five cases consolidated with this appeal (97R-205, 97R-206, 97R-207, 97R-208, 97R-209); the *Marshall Valuation Service*; the *Nebraska Assessor's Reference Manual* - Volumes 1 and 2 (Reissue 1997); the Nebraska Constitution; the Nebraska State Statutes; *Title 442, Nebraska Administrative Code* (Tax Equalization and Review Commission's Rules and Regulations); three standard reference works published by the International Association of Assessing Officers: *Property Assessment Valuation, Second Edition*, (1996); *Property Appraisal and Assessment Administration*, (1990); and the *Glossary for Property Appraisal and Assessment*, (1997); the Property Tax Division of the Nebraska Department of Revenue's *Published 1997 Ratios and*

*Measures of Central Tendency; the 1997 County Profiles for Lancaster County as reported in the 1998 Statewide Plan of Equalization; the 1997 Statewide Equalization Proceedings; the Uniform Standards of Professional Appraisal Practices (1997); Title 298 Nebraska Real Estate Appraiser Board Rules and Regulations (1995); the Nebraska Real Estate Appraiser Board Certification Requirements (Jan. 1998); and the Nebraska Real Estate Appraiser Board Education Core Curriculum (Jan. 1998).*

The Commission, over the objection of the County, took judicial notice of the Findings and Orders issued in Commission Case Number 97R-212. The Commission also received and considered certain exhibits and the testimony offered by the parties during the course of the hearing.

#### **ISSUE BEFORE THE COMMISSION**

Neb. Rev. Stat. §77-1502 (Reissue 1996) requires a taxpayer to identify the issues to be presented to the County Board of Equalization. The Commission's jurisdiction is limited to those issues. Neb. Rev. Stat. §77-1511 (Reissue 1996). *Arcadian v. Sarpy County*, 7 Neb. App. 489, 583 N. W. 2d 353 (1998). At the hearing Taxpayer agreed that the only issue before the Commission is whether the assessed value of the subject property as determined by the County was equalized with the multi-family class of property in Lancaster County for tax year 1997. Taxpayer also agreed that the value of the subject property is not at issue.

## DEFINITIONS

The issues presented require a common understanding of certain terms which have a unique definition in mass appraisal practice. Definitions of those terms are therefore set forth below:

“Assessment ratio” is defined as “(t)he fractional relationship an assessed value bears to the market value of the property in question.” *Glossary for Property Appraisal and Assessment*, International Association of Assessing Officers (“I. A. A. O.”), 1997, (“*Glossary*”), p. 12.

“Comparable properties” which are improved share “overall quality, architectural attractiveness (style), age, size, amenities, functional utility, (and) physical condition.” *Property Assessment Valuation*, 2d Ed., I. A. A. O., 1996, p. 98.

Professionally accepted mass appraisal methods define “equalization” as “(t)he process by which an appropriate governmental body attempts to ensure that all property under its jurisdiction is assessed at the same assessment ratio or at the ratio or ratios required by law.” *Glossary*, p. 50.

“Mass appraisal” is “(t)he process of valuing a group of properties as of a given date, using standard methods, employing common data, and allowing for statistical testing.” *Glossary*, p. 85.

The “median” is “a measure of central tendency. The value of the middle item in an uneven number of items arranged or arrayed according to size; the arithmetic average of the two central items in an even number of items similarly arranged; a positional average that is not affected by the size of extreme values.” *Glossary*, p. 86.

“Ratio studies” are a study of “the relationship between appraised or assessed values and market values. Indicators of market values may be either sales (sales ratio study) or independent “expert” appraisals. Of common interest in ratio studies are the level and uniformity of the appraisals or assessments.” *Glossary*, p. 115.

### 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) (1997 Supp.) The Commission therefore finds and determines as follows:

#### A.

#### PROCEDURAL FINDINGS

1. That the Taxpayer is the owner of record of a multi-family apartment complex as described in the appeal in this case (“subject property”).
2. That the County Assessor proposed valuing the subject property at \$6,439,300 for the purposes of taxation as of January 1, 1997 (“assessment date”). (E49, 103).
3. That the Taxpayer timely filed a protest of the assessed value of its property for tax year 1997. (E49, 22).
4. That the County granted the protest in part, and determined that the “actual” or “fair market” value of the subject property as of the assessment date to be \$6,169,500 (E49, 103).

5. That nothing in the record establishes what part, if any, of the reduction in assessed value by the County is attributable to "equalization."
6. That Taxpayer timely filed an appeal of the County's decision to the Nebraska Tax Equalization and Review Commission ("the Commission"). (Appeal Form).
7. That the subject property is a multi-family residential property consisting of a 112-unit apartment complex and 116 townhouse units which are located in the City of Lincoln, Lancaster County, Nebraska. (E49, 26).
8. That Taxpayer's protest was heard by a referee. (E49, 95-102).
9. That the Referee reviewed all information provided by both the County Assessor and Taxpayer. (E49, 99-100).
10. That the Referee recommended that the assessed value be set at \$6,169,500. (E49, 95).
11. That the County adopted the Referee's recommended value. (E49, 103).
12. That since the Taxpayer agreed that value is not at issue, the Commission finds and determines that the "actual" or "fair market" value of the subject property as of the assessment date is \$6,169,500.

**B.**

**SUBSTANTIVE FINDINGS**

1. That the Property Tax Division of the Nebraska Department of Revenue ("the Division") establishes the classes of real property within the State of Nebraska for purposes of assessment.
2. That the Division has determined that multi-family properties are a separate class of property pursuant to Title 316, Nebr. Admin. Code, Chapter 40, Reg. 004.01A.

3. That this determination is mandatory and binding upon all county assessors within the State of Nebraska under Neb. Rev. Stat. §§77-1314, 77-1311(2) and 77-371 (Reissue 1996).
4. That for tax year 1997, all multi-family properties in Lancaster County were reviewed to ascertain compliance with state law and professionally accepted mass appraisal methods.
5. That the acceptable assessment/sales ratio for all non-agricultural real property, including multi-family properties, is 92% to 100%, pursuant to Neb. Rev. Stat. §77-5023 (1997 Supp.).
6. That prior to the 1997 reassessment, multi-family properties within Lancaster County had a level of assessment of between 82% and 84%.
7. That under professionally accepted mass appraisal methods "ratio studies" are based on the sales of "comparable" properties. That these sales are reported by the county assessors to the Division. See, e.g., *Directive 97-3, County Assessors Reference Manual, Volume 1. ("Directive")*.
8. That these sales of comparable properties are collected and verified, and those "qualified" sales are included in the Qualified Sales Roster for each class of property. (*Directive, p. 3*).
9. That ratio studies are made of these qualified sales, and a "median" level of assessment determined. That this median level of assessment is reported by the Division for each class of property in each of the 93 counties of this state pursuant to Neb. Rev. Stat. §77-1327(6) (Reissue 1996).

10. That this median level of assessment is the "average level of value" referred to in Neb. Rev. Stat. §77-1504 (Reissue 1997). That the median level of assessment is the level of assessment to which the subject property is adjusted when a county board of equalization equalizes assessments under Neb. Rev. Stat. §77-1504 (1997 Supp.).
11. That the Department's ratio study demonstrates that for tax year 1997, there were 91 qualified sales of multi-family property within Lancaster County.
12. That these 91 sales formed the basis of the assessment/sales ratio study found in Exhibit 50.
13. That this assessment/sales ratio study was based on sales of multi-family properties which sold between July 1, 1994, and June 30, 1996, in Lancaster County, Nebraska. (E50, 2; *Directive*).
14. That this assessment/sales ratio study shows that properties which sold during the applicable time frame had a median assessment/sales ratio of 99.36%. (E50, 2).
15. By definition, if the median level of assessment is 99.36%, then one-half of the multi-family properties which sold during the applicable period of time had an assessment/sales ratio of more than 99.36%, and one-half of the multi-family properties which sold during the applicable time frame had an assessment/sales ratio below 99.36%.
16. That this ratio study was dated April 10, 1997. (E50).
17. That the Assessor's Office prepared a separate assessment/sales ratio study for purposes of internal evaluation of assessment practices. (E51, E52).
18. That these Exhibits analyzed the sale of 58 multi-family properties in Lancaster County between January 1, 1996, and June 30, 1997.

19. That based on these sales, the assessment/sales ratio study shows that the median assessment/sales ratio is 93.33%. (E52).
20. That this study was not prepared until November 20, 1997. (E51, E52).
21. That the County was required to complete its actions on protests filed for tax year 1997 by July 25, 1997. Neb. Rev. Stat. §77-1502 (Reissue 1996).
22. That the assessment/sales ratio study found in Exhibit 51 and Exhibit 52 is for a different and shorter time frame than the ratio study undertaken by the Division.
23. That the sales reported in Exhibit 51 and Exhibit 52 are "time adjusted," to January 1, 1997, and those reported by the Division are not. (Testimony of County Appraiser, *Directive*).
24. That the ratio study found in Exhibit 51 and Exhibit 52 had not been prepared at the time when the County took its final action.
25. That therefore the only level to which the County could have "equalized" the assessed value of the subject property was 99.36%.
26. That the assessed value of the subject property is, from the record before the Commission, equalized with the multi-family class of property within Lancaster County for tax year 1997.
27. Therefore the decision of the County was neither unreasonable nor arbitrary.

## I. ANALYSIS

Taxpayer alleges that the County failed to equalize the assessed value of Taxpayer's property with the class of multi-family property. Taxpayer's prayer for relief contends that the

Commission should reduce the assessed value of the subject property by 6.66%. Taxpayer offers a ratio study made by the Assessor's Office in support of its position. Exhibit 51 and Exhibit 52 present a compelling argument at first blush. The ratio study was made of 58 multi-family properties in Lancaster County between January 1, 1996, and June 30, 1997. The sales were "time adjusted" to January 1, 1997, the assessment date. This ratio study demonstrates that the median indicated "assessment ratio" is 93.33%.

A closer examination of this study, however, presents a number of troubling issues. First, this ratio study is dated November 7, 1997. The ratio study therefore wasn't performed until more than three months after the deadline for final action by the County. Second, the ratio study didn't follow the standards adopted by the Division for use in all 93 counties. *Directive 97-3, 1997 County Assessors Reference Manual, Volume 1 ("Directive")*. Third, the assessed values of the reported sales include the adjustments made by the County during the July, 1997, protest process. Finally, this study, at least from the record before the Commission, was never made public, and not a shred of evidence was offered to show that the information was ever provided to the County Board of Equalization.

Taxpayer's request also overlooks a critical threshold issue. "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).

Given this mandate, Taxpayer is required to adduce evidence establishing that the County failed to perform its duty to “. . . make its adjustment so that the value of the protested property compares to the average level of value of class or subclass of property in which the protested property is categorized.” Neb. Rev. Stat. §77-1504 (Reissue 1996).

Such proof should be fairly easy to procure. Neb. Rev. Stat. §77-1502 (1997 Supp.) requires the County to “. . . prepare a separate report as to each action taken by it with respect to equalization, and such report shall include a . . . statement by the board of the basis upon which it took such action.” Taxpayer has not made this report a part of the record in this case. The transcript of the proceedings before the County only shows that the County’s decision was based on a motion to “. . . accept the Assessor’s recommendation or the referee’s recommendation which ever is lower on any real estate valuation protest which has not received previous action for 1997.” (E31, 20-21). The Commission cannot, therefore, from the record before it, determine whether the County affirmatively considered Taxpayer’s request for equalization. Under these circumstances, the “presumption” set forth above requires that the Commission must find and determine that the County “faithfully performed its official duties in making an assessment.” *Forney, supra*, at 423, 636. The Commission must, in turn, conclude that the County equalized the assessed value of the subject property with median assessment ratio of the multi-family class of property.

The record supports this finding. The County reduced the assessed value of the subject property by \$269,800. The only ratio study which was available to the County during the

equalization process for tax year 1997 is the ratio study set forth in Exhibit 50. The document specifically recites that it was served on the Lancaster County Assessor, and the Assessor is required to publish this information pursuant to Neb. Rev. Stat. §77-1327(6) (Reissue 1996). This ratio study concludes that the class of multi-family property in Lancaster County had an assessment/sales ratio of 99.36%. The difference between the level of assessment of the subject property (100%, since valuation is not at issue) and the multi-family class (99.36%) is fifty-four one-hundredths of one percent (.54%). The Nebraska Supreme Court has held that mathematical precision in assessment valuations and equalization is impossible. *LeDioyt v. County of Keith*, 161 Neb. 615, 622, 74 N. W. 2d 455, 461 (1956). Given the information available to the County at the time it took action, the value of the subject property was equalized with the multi-family class of property.

The Commission must also note that the ratio study made by the Department is based on a uniform set of standards applied statewide. (*Directive*). The Assessor's study was made for internal evaluation purposes, based on a set of standards which are not used anywhere else in the state, using "time adjusted" sales, for a different period of time than used by the Division. The results of this ratio study provide a more accurate indication of the quality of assessment practices in Lancaster County as of the assessment date. But this ratio study also makes use of "hindsight." The ratio study includes sales of comparable property made up to six months after the assessment date. The ratio study also includes sales which had adjustments made to the assessed value by the County during the equalization process. The County could not have known of these changes until after the Taxpayers who appeared before it presented their evidence, and the County made its administrative decision based on that evidence.

Taxpayer's request presents other problems as well. If the Commission granted Taxpayer's appeal, the Commission would utilize a ratio study to equalize the assessed value of Taxpayer's property which was not used for any other parcel of property in the County. This misapplication would violate the constitutional mandate of uniform and proportionate assessments. Neb. Const. Art. VIII, Section 1.

The Commission, from the record before it, cannot find that Taxpayer has overcome the presumption which must be afforded the County by state law. Nothing in the record shows that the County was unreasonable or arbitrary *at the time it made its decision*. Furthermore Taxpayer has offered no statutory or other legal authority which requires that a decision be found unreasonable or arbitrary in light of subsequent developments. The decision of the Lancaster County Board of Equalization must therefore be affirmed.

#### **JURISDICTION**

The jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat section 77-5007, as amended by 1998 Neb. Laws L.B. 306, section 40.

#### **STANDARD OF REVIEW**

The Commission must affirm the decision of the county board of equalization unless the Taxpayer demonstrates by a preponderance of the evidence that the decision made by the county board of equalization was not governed by reason, or was made in disregard of the facts or circumstances, or was made without some basis which would lead a reasonable person to the same conclusion. Title 442, Nebraska Administrative Code, Chapter 5, section 018. *See also*

*Harrison Square v. Sarpy. Cty. Bd. Of Equal.*, 6 Neb. App. 454 (1998); 574 N.W. 2d 180 (1998).

### CONCLUSIONS OF LAW

The Commission concludes as a matter of law that it has jurisdiction over both the parties and the subject matter of this appeal. The Commission further concludes that, pursuant to the Standard of Review set forth above, the Appellant has failed to establish by a preponderance of the evidence that the decision of the Lancaster County Board of Equalization was unreasonable or arbitrary. The Commission must, therefore, affirm the decision of the Lancaster County Board of Equalization.

### ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. That the decision of the Lancaster County Board of Equalization setting the assessed value of the subject property in the amount of \$6,169,500 year 1997, is affirmed.
2. That Taxpayer's real property, known as Chateau 1<sup>st</sup> Addition, Lot 2, in the City of Lincoln, Lancaster County, Nebraska, shall be valued as follows for tax year 1997, as determined by the Lancaster County Board of Equalization:

|               |             |
|---------------|-------------|
| Land:         | \$ 775,200  |
| Improvements: | \$5,394,300 |
| Total:        | \$6,169,500 |

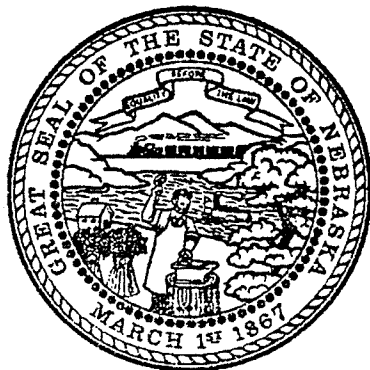
3. That this decision, if no appeal is filed, shall be certified within thirty days to the Lancaster County Treasurer, and the Lancaster County Assessor, pursuant to Neb. Rev.

Stat. §77-1511 (Reissue 1996).

4. That this decision shall only be applicable to tax year 1997.
5. That each party is to bear its own costs in this matter.

**IT IS SO ORDERED.**

Dated this 20<sup>th</sup> day of October, 1998.



SEAL

*Mark P. Reynolds*, Chairman

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

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