

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

MONUMENT MANAGEMENT GROUP.)	
L. L. C..)	
)	CASE NO. 98C-76
Appellant.)	
)	
vs.)	DOCKET ENTRY
)	REVERSING DECISION OF
SCOTTS BLUFF COUNTY BOARD OF)	COUNTY
EQUALIZATION.)	
)	
Appellee.)	

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 Sidney, Cheyenne County, Nebraska, on the 24th day of June, 1999, pursuant to a Notice of Hearing issued the 25th day of May, 1999.

Monument Management Group, L. L. C., ("Taxpayer") appeared at the hearing through two partners, and the Scotts Bluff County Board of Equalization appeared through the Scotts Bluff 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 Taxpayer is the owner of record of certain commercial real property located in the City of Scottsbluff, Scotts Bluff County, Nebraska ("subject property").
2. That the Scotts Bluff County Assessor ("Assessor") proposed valuing the subject property for purposes of taxation in the amount of \$2,345,095 as of January 1, 1998 ("assessment date"). (E1).
3. That Taxpayer timely filed a protest of the proposed valuation, and requested that the subject property be valued at \$1,394,600. (E1).
4. That the basis of the protest was the allegation that the property valuation was considerably more than actual cost. (E1).
5. That the County denied the protest. (E1).
6. That thereafter, the Taxpayer timely filed an appeal of the County's decision to the Commission. (Appeal Form).

B. SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. That the assessed value of the land component of the subject property is not at issue.
2. That Taxpayer testified that it's opinion of actual or fair market value as to the improvement component of the subject property as of the assessment date was approximately \$1.6 million.

3. That construction of the subject property was completed in October of 1996. That the cost of construction of the subject property, including personal property, was \$1,509,532.11. (E14:5).
4. That a mortgage was taken for the construction of the subject property in the amount of \$1.9 million, at an interest rate of 8.25%. However no evidence of typical income, typical vacancy rate, typical expense ratio, typical capitalization rate, or opinion of value under the Income Approach appears in the record.
5. That no evidence of value under the Sales Comparison Approach appears in the record.
6. That the County used the Cost Approach to value the subject property. That the Cost Approach is an appropriate method of valuing real property under professionally accepted mass appraisal methods when the improvements are newer, construction costs are easier to estimate, and there is less depreciation. *Property Assessment Valuation*, 2nd Ed., p. 127. That County Assessors are required to utilize professionally accepted mass appraisal methods by state law. Neb. Rev. Stat. §77-112. (1998 Cum. Supp.).
7. That from the record before the Commission finds and determines that the actual or fair market value of the improvement component of the subject property as of the assessment date was \$1,735,378, that the actual or fair market value of the land component as stipulated to by the Parties was \$144,600, and that the actual or fair market value of the subject property as of the assessment date was \$1,879,978.
8. That therefore the assessed value of the subject property for tax year 1998 as determined by the County (\$2,345,095) is NOT supported by the evidence.

9. That sufficient evidence has been adduced to establish that the decision of the County was unreasonable and arbitrary.
10. 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 as a matter of law the Taxpayer has met his burden of proof as required by *Kawasaki Motors v. Lancaster Cty. Bd. Of Equal.*, 7 Neb. App. 655 (1998).
5. 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 Scotts Bluff County Board of Equalization which set the assessed value of the subject property for purposes of taxation at \$2,345,095 for tax year 1998 was both unreasonable and arbitrary.

6. That therefore the decision of the Scotts Bluff County Board of Equalization must be vacated and reversed.

ORDER

1. That the order of the Scotts Bluff County Board of Equalization setting the assessed value of the subject property for tax year 1998 at \$2,345,095 is vacated and reversed.
2. That Taxpayer's commercial real property legally described as Lot 11, Block 1, Quintd Commercial Tract, S Replat, in the City of Scottsbluff, in Scotts Bluff County, Nebraska, shall be valued as follows for tax year 1998:

Land	\$144,600
Improvements	\$1,735,378
Total	\$1,879,978

3. That this decision, if no appeal is filed, shall be certified to the Scotts Bluff County Treasurer, and the Scotts Bluff 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 24th day of June, 1999, and are therefore deemed to be the Order of Commission in this case, pursuant to Neb. Rev. Stat. §77-5005(5) (1998 Cum. Supp.).

Signed and sealed this 30th day of June, 1999.





Mark P. Reynolds, Chairman