

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

LAKEVIEW PARK APARTMENTS, LLC,)

Appellant,)

vs.)

LANCASTER COUNTY BOARD OF
BOARD OF EQUALIZATION,)

Appellee)

CASE NO. 97R-241

FINDINGS AND ORDERS

Filed August 28, 1998

Appearances:

For the Appellant: Peter W. Katt
Pierson, Fitchett, Hunzeker, Blake, and Loftis
P.O. Box 95109
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For the Appellee: Michael E. Thew
Chief Deputy Lancaster County Attorney
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Before: Commissioners Edwards, Hans, and Reynolds

Reynolds, Chairman, for the Commission:

SUMMARY OF DECISION

The Commission affirms the 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

Lakeview Park Apartments, LLC ("Taxpayer") is the owner of certain multi-family real property located in Lancaster County, Nebraska. The Lancaster County Assessor reappraised all multi-family real property within the County for tax year 1997. As a result of this reappraisal, the assessed value of the subject property increased from its 1996 assessed value. Taxpayer protested the county assessor's determination of value to the Lancaster County Board of Equalization ("County"), and requested ". . . equalization with regard to these multi-family properties as it relates to other classes of property. . . ." (Exhibit 8, at p. 23-24). County granted the protest in part, from which decision Taxpayer appeals.

EVIDENCE BEFORE THE COMMISSION

Judicial notice was taken, without objection, of the pleadings and evidence in each of the thirty-seven cases consolidated with this appeal; 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*; *1997 Statewide Equalization Proceedings*; *Uniform Standards of Professional Appraisal*

Practices (1997); Title 298 Nebraska Real Estate Appraiser Board Rules and Regulations (1995); Nebraska Real Estate Appraiser Board Certification Requirements (Jan. 1998); and the Nebraska Real Estate Appraiser Board Education Core Curriculum (Jan. 1998).

The Commission also received and considered certain exhibits and the testimony offered by the parties during the course of the hearing.

ISSUES 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 presented to the County Board of Equalization. Neb. Rev. Stat. §77-1511 (Reissue 1996). Taxpayer alleges that the issues presented are 1), "(d)id the County properly perform its mandated duty pursuant to Neb. Rev. Stat. Section 77-1504, and adjust the value of [Taxpayer's] property to the average level of value of the class or subclass in which the property was categorized," and 2) "(w)as the County unreasonable and arbitrary in failing to equalize the value of [Taxpayer's] property with the value of other properties in its class or subclass?" (Taxpayer's Brief, page 2).

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:

1. That "classification" does not determine value.
2. That "classification," in Nebraska, is the grouping of similar properties for mass appraisal purposes.
3. 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.
4. That the Division has determined that multi-family properties are to be classified as "multi-family" property pursuant to Title 316, Nebr. Admin. Code, Chapter 40, Reg. 004.01A.
5. That this determination is mandatory and binding upon all county assessors within the State of Nebraska under Neb. Rev. Stat. Neb. Rev. Stat. §§77-1314, 77-1311(2) and 77-371 (Reissue 1996).
6. 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.

7. That the acceptable assessment level for all non-agricultural real property, including multi-family properties, is 92% to 100% pursuant to Neb. Rev. Stat. §77-5023 (1997 Supp.).
8. That prior to the 1997 reassessment, multi-family properties within Lancaster County had a level of assessment of between 82% and 84%.
9. That Taxpayer is the owner of record of certain multi-family real property (an apartment complex), which is legally described in the petition ("subject property").
10. That the County Assessor proposed valuing the subject property for purposes of taxation for tax year 1997 in the amount of \$4,942,100.
11. That Taxpayer timely filed a protest of that determination of value to the Lancaster County Board of Equalization ("County").
12. That the basis for the protest was the allegation that the property was overvalued and that the assessed value of the subject property was not equalized with other property within Lancaster County.
13. That the Taxpayer requested that the property be valued at \$3,745,116 for purposes of taxation.
14. That the County granted the protest in part, and reduced the assessed value of the subject property to \$3,988,400 based on the recommendation of the referee and the County Assessor.
15. That Taxpayer thereafter timely filed an appeal of that decision to the Commission.
16. That Taxpayer has adduced no evidence of fair market value of the subject property.
17. That evidence of fair market value of the subject property is an essential element of an

“equalization” case.

18. That the equalization of levels of assessment in Nebraska is based on ratio studies made by the Division.
19. That these 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”)*.
20. 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.*
21. 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).
22. 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.).
23. That the level of assessment for the entire class of “residential” property was 92%.
Exhibit 9, p. 2.
24. That according to Exhibit 3, the property class code for Urban Multi-Family Property in Lancaster County is “MF.”
25. That ratio study found in Exhibit 9, page 2, demonstrates that for tax year 1997, the sales

of "MF" properties, or Urban Multi-Family Properties, were included in the ratio studies for the residential class of property for Lancaster County.

26. That this erroneous inclusion occurred as a result of an employee of the Lancaster County Assessor's Office reporting the sales of certain multi-family properties to the Division. That the information regarding the sale of these properties were inadvertently reported as "residential" sales information rather than "multi-family" sales. That the properties were incorrectly reported due to a "coding" error on a report generated by the Lancaster County Assessor's Office.
27. That a clerical error in reporting sales information does not result in a change of classification.
28. That Exhibit 9, page 2, establishes that 91 multi-family properties sold between July 1, 1994, and June 30, 1996. That the same Exhibit demonstrates that 7,497 residential properties sold during the applicable time frame in Lancaster County.
29. That 91 sales out of 7,497 sales constitutes 1.2% of the total sales reported.
30. That therefore the inclusion of the 91 multi-family sales in the ratio study for the residential class of property in Lancaster County would have had a negligible effect on the level of assessment for the residential class of property in Lancaster County for tax year 1997.
31. That Taxpayer has admitted in his appeal to the Commission that "The County Assessor and County Board accepted the referee recommendations resulting in most multi-family properties being reduced from the Assessor's recommendations but remaining substantially above the 1996 valuations." (Appeal Form at p. 2).

32. That the level of assessment for the multi-family class of properties which sold was 99.36% according to Exhibit 9, p. 2.
33. 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 price 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 price ratio below 99.36%.
34. That this ratio study was dated April 10, 1997.
35. That the County, in all but one of the thirty-seven appeals before the Commission, made reductions in the assessed valuation of these properties, ranging from approximately 1% to approximately 30%, with an average reduction of approximately 10.3%.
36. That by law, the actions of the County regarding protests made under Neb. Rev. Stat. §77-1502 and 1504 (Reissue 1996) must be made between June 1 and July 25. That therefore these actions took place after the ratio study was conducted.
37. That therefore Exhibit 9 does not establish the level of assessment for multi-family properties after the assessed values of "most multi-family properties" were reduced.
38. That had the County further reduced Taxpayer's valuations by approximately another 10%, as requested by Taxpayer, the reductions would have resulted in the level of assessment for the class of multi-family property falling below the acceptable range of ratios (92% to 100%) required by law.
39. That Exhibit 11 establishes that the indicated level of value for multi-family properties for tax year 1997 was 93.33% in Lancaster County.
40. That in the absence of evidence of fair market value of the subject property, the

Commission cannot determine the level of assessment of the subject property.

41. That in assessing Taxpayer's property, the assessor's office used professionally accepted mass appraisal methodologies in arriving at the valuation of Taxpayer's property.
42. That the final assessed value of the subject property for the tax year 1997 is supported by the evidence.
43. That insufficient evidence has been adduced to establish that the decision of the County was unreasonable or arbitrary.

I. ANALYSIS

Taxpayer appears to contend that a clerical error in the reporting of sales results in a change of classification. Classification is a fundamental characteristic of real property which must be determined by a county assessor in accordance with state law and professionally accepted mass appraisal methods. Neb. Rev. Stat. §77-112 (1997 Supp.). County assessors are in fact directed to classify real property as: single-family; multi-family; commercial; industrial; or agricultural, under the applicable rules and regulations of the Division. (Title 316, Nebr. Admin. Code, Chapter 40, Reg. 40-001.07C and Reg. 40-001.07D.) These rules and regulations have the force and effect of law. *Alexander v. J. D. Warehouse*, 253 Neb. 153, 568 N. W. 2d 892 (1997).

As noted above, "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." Classification is an important part of the valuation process since standard methods and standard data are applied to all properties within the class in order to determine assessed value.

Under these facts presented here, a clerical error resulted in sales of multi-family properties being included in ratio studies for the residential class of property. This clerical error had a negligible effect on the level of assessment for that class of property. Furthermore, there is no evidence whatsoever that this erroneous reporting of sales had any effect on the valuation of the subject property.

II. REQUEST FOR EQUALIZATION

Taxpayer contends that there are two issues before the Commission: (1) "did the County properly perform its mandated duty pursuant to Neb. Rev. Stat. Section 77-1504 [sic], and adjust the value of [Taxpayer's] property to the average level of value of the class or subclass in which the property was categorized" and (2) whether the county was "unreasonable and arbitrary in failing to equalize the value of [Taxpayer's] property with the value of other property in its class or subclass." (Taxpayer's Brief at p. 2).

Equalization, which is defined above, requires four separate pieces of information: (1) the assessed value of the subject property; (2) the fair market value of the subject property; (3) the assessed value of the "comparable" property (or class or subclass of comparable property); and (4) the fair market value of the "comparable" property (or class or subclass of comparable property). The assessed value of the subject property divided by the fair market value of the subject property yields the "assessment ratio" of the subject property. The assessed value of the comparable property divided by the fair market value of the comparable property yields the "assessment ratio" of the comparable property or class or subclass of property against which the "assessment ratio" of the subject property is compared.

The assessed value of the subject property, after County action, is \$3,988,400. Although there is credible evidence in the record before the Commission of the level of assessment of the multi-family class of property, there is no evidence of the fair market value of the subject property. Without the fair market value of the subject property, an "assessment ratio" cannot be determined for the subject property. Without that "assessment ratio" the County could not equalize the assessed value of the subject property with the average level of value the multi-family class of property. The County was therefore neither arbitrary nor unreasonable in its actions.

III. EQUALIZATION BETWEEN CLASSES

The Commission must also note that the County had no authority to equalize assessments between classes of property. The Nebraska Supreme Court has held that "Administrative bodies have only that authority specifically conferred upon them by statutes or by construction necessary to achieve the purpose of the relevant act." *Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 554 N. W. 2d 778 (1996). The County Board of Equalization, during the protest process, is required to "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) (Emphasis added). The County had no statutory grant of authority to equalize values between classes of property. In fact, under existing state law, that authority is reserved to the Commission. Neb. Rev. Stat. §77-5023, *et seq.* (1997 Supp.). The County is held to be reasonable and prudent in only taking those actions which are within the scope of its authority.

IV. OTHER ISSUES

Taxpayer also contends that assessed value of the subject property "exceeds the actual value of the property as required by Neb. Rev. Stat. Section 1371." Neb. Rev. Stat. §77-1371 (1996 Reissue) allows assessors to use comparable sales in determining actual value. The statute also sets forth guidelines for determining what constitutes a comparable sale. Taxpayer contends that the assessor failed to use appropriate comparable sales in determining the actual value of its properties. Taxpayer, however, fails to consider Neb. Rev. Stat. §77-112 (1997 Supp.) which holds that "Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach, taking into account factors such as location, zoning, and current functional use; (2) income approach; and (3) cost approach." The uncontroverted evidence before the Commission is that both the county assessor and the referee utilized the income approach to value the subject property. No evidence was presented to the Commission which would establish that the valuation of the subject property as determined by the referee and adopted by the County was unreasonable or arbitrary.

The Commission also notes that Taxpayer did not introduce evidence of comparable sales during its hearing before the Commission. Taxpayer must introduce competent evidence of actual value of its property in order to successfully claim that a property is overvalued. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W. 2d 515 (1981). And, as noted above, Taxpayer adduced no evidence of fair market value of the subject property. There is therefore no evidence to support Taxpayer's contention that the subject property is overvalued.

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.

CONCLUSIONS OF LAW

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. No evidence has been adduced to show that the County had the legal authority to equalize values between classes of property, and no evidence of fair market value of the subject property has been adduced. There is, therefore, no evidence upon which the Commission could conclude that the action of the County in this case was unreasonable or arbitrary. The Commission must, therefore, and hereby does conclude as a matter of law that the decision of the Lancaster County Board of Equalization which set the assessed value of the subject property for purposes of taxation at \$3,988,400 for tax year 1997, was neither unreasonable nor arbitrary, and therefore that decision of the Lancaster County Board of Equalization must be affirmed.

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 \$3,988,400 for tax year 1997, is affirmed.
2. That Taxpayer's real property, known as Lakeview Park 1st Addition, Lot 1, Lincoln,

Lancaster County, Nebraska, shall be valued as follows for tax year 1997, as determined by the Lancaster County Board of Equalization:

Land:	\$ 367,200
Improvements:	\$3,621,200
Total:	\$3,988,400

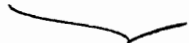
3. That this decision shall only be applicable to tax year 1997.
4. That each party is to bear its own costs in this matter.

IT IS SO ORDERED.


Dated this 28th day of August, 1998.



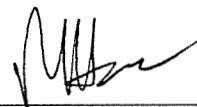
SEAL



Mark P. Reynolds, Chairman



Janet L. Edwards, Commissioner



Robert L. Hans, Commissioner