

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

WESTIN FAMILY LTD. PARTNERSHIP,	)	CASE NO.	98R-137	98R-143
	)		98R-138	98R-144
Appellant,	)		98R-139	98R-145
	)		98R-140	98R-146
vs.	)		98R-141	
)			
JEFFERSON COUNTY BOARD OF	)	DOCKET ENTRY		
EQUALIZATION,	)	AFFIRMING DECISION		
	)	OF COUNTY		
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 Lincoln, Lancaster County, Nebraska, on the 5th day of October, 1999, pursuant to an Amended Order for Hearing and Amended Notice of Hearing issued the 23rd day of July, 1999.

Westin Family Ltd. Partnership ("Taxpayer") appeared at the hearing through one of its owners, Arden E. Schacht, and through counsel, Mr. Ronald R. Brackle, Esq. The Jefferson County Board of Equalization appeared at the hearing through Linda A. Bauer, Jefferson 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 Jefferson County, Nebraska ("subject properties").
2. That the Jefferson County Assessor ("Assessor") proposed valuing the subject properties for purposes of taxation as of January 1, 1998 ("assessment date").
3. That Taxpayer timely filed a protest of the proposed valuations, and requested that the proposed values be reduced.
4. That the basis of the protests was the allegation that the subject properties were overvalued.
5. That the County denied each of the protests. That the proposed value as determined by the Assessor, the requested value of the Taxpayer, and the final determination of the actual or fair market value of each of the subject properties as of the assessment date is set forth below:

Case Number	Assessor	Taxpayer	County	Exhibit Number
98R-137	\$2,272	\$1,400	\$2,272	29
98R-138	\$2,272	\$1,430	\$2,272	30
98R-139	\$2,045	\$1,200	\$2,045	34
98R-140	\$3,314	\$2,503	\$3,314	19
98R-141	\$2,272	\$1,441	\$2,272	35
98R-143	\$39,542	\$31,430	\$39,542	20
98R-144	\$105,495	\$83,013	\$105,495	33
98R-145	\$97,088	\$76,063	\$97,088	36
98R-146	\$2,272	\$1,467	2,272	18

6. That after the County reached a final determination of value for each of the subject properties, the Taxpayer timely filed an appeal of each of the County's decisions to the Commission. (Appeal Forms).

B.
SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. That the subject properties are parts of a single economic operating unit engaged in food production. That the economic unit is operated under the name of "Fairbury Foods." That "Fairbury Foods" is engaged in the production of real bacon bits, artificial bacon bits made from soybeans, processed sunflower seeds, Mexican foods such as fajitas and enchiladas, packaged cornstarch and baking soda, among others.
2. That there are three professionally accepted mass appraisal methods which may be used to determine actual or fair market value: the Cost Approach, the Income Approach, and the Sales Comparison Approach. Neb. Rev. Stat. §77-112 (1998 Cum. Supp.) That

Taxpayer adduced no evidence of the actual or typical (i. e., market) income and expenses, or actual or market capitalization rates which might be used to determine the actual or fair market value of the economic unit, or the improvements at issue in these appeals under the Income Approach.

3. That Taxpayer adduced no evidence which might be used to determine the actual or fair market value of the improvements at issue in these appeals under the Cost Approach.
4. That Taxpayer's evidence of actual or fair market value based on the Sales Comparison Approach was limited to two sales of vacant land as set forth below.
5. That in Case Number 98R-137, the subject property is vacant commercial real property legally described as Lot 8, Blk 16, McDowells 1st Add., F8, in the City of Fairbury, Jefferson County, Nebraska.
6. That in Case Number 98R-138, the subject property is vacant commercial real property legally described as Lot 10, McDowells 1st Add., F8, in the City of Fairbury, Jefferson County, Nebraska.
7. That in Case Number 98R-139, the subject property is vacant commercial real property legally described as Lot 12, Blk 16, McDowells 1st Add., F8, in the City of Fairbury, Jefferson County, Nebraska.
8. That in Case Number 98R-140, the subject property is vacant commercial real property legally described as Lot 8 and TL 2 of Lot 9, Blk 17, McDowells 1st Add., F8, in the City of Fairbury, Jefferson County, Nebraska.

NUTZICK LAW LIBRARY
OSHER UNIVERSITY

9. That in case Number 98R-141, the subject property is vacant commercial real property legally described as Lot 10, Blk 17, McDowell's 1st Add., F8, in the City of Fairbury, Jefferson County, Nebraska.
10. That in Case Number 98R-143, the subject property is commercially improved real property legally described as Lot 11, Blk 16, McDowell 1st Add., F8, in the City of Fairbury, Jefferson County, Nebraska.
11. That in Case Number 98R-144, the subject property is commercially improved real property legally described as PT Lot 12, and all of Lot 13 and Lot 14, Blk 16, F8, in the City of Fairbury, Jefferson County, Nebraska.
12. That in Case Number 98R-145, the subject property is commercially improved real property legally described as Lots 4 through 7, Blk 17, F8, in the City of Fairbury, Jefferson County, Nebraska.
13. That in Case Number 98R-146, the subject property is vacant commercial real property legally described as Lot 1, Blk 37, OT Fairbury, F8, in the City of Fairbury, Jefferson County, Nebraska.
14. That all of the subject properties are zoned "Commercial/Industrial."
15. That Taxpayer contends that some of the vacant parcels (98R-140 and 98R-141) constitute "excess land." "Excess land" is defined as land in excess of that minimum amount of land necessary for the improvement. *Property Assessment Valuation*, 2nd Ed., p. 74. Taxpayer adduced no evidence of the actual or fair market value of "excess land." Taxpayer later testified that the land was being held for later expansion. Taxpayer's evidence in this regard is not persuasive.

16. That Taxpayer testified that commercial property located in the north part of town is more desirable, but did not know the actual or fair market value in that part of town. That Taxpayer further testified that commercial property located in the south part of town, where the subject properties are located, is in the range of \$.08 - \$.10 per square foot.
17. That in Case Number 98R-137, the Taxpayer's requested value was \$1,400. (E29). That Taxpayer acquired the subject property in approximately 1975 for \$2,500. That the property is used as a parking facility for Taxpayer's business.
18. That in Case Number 98R-138, the Taxpayer's requested value was \$1,430. (E30). That Taxpayer acquired the subject property between 1978 and 1980 for \$2,000. That the Taxpayer removed a structure on the property at the cost of \$400.
19. That in Case Number 98R-139, the Taxpayer's requested value was \$1,200. (E34). That the Taxpayer acquired the property in 1992 for a cost which Taxpayer could not recall. That the property had a structure on it which was removed at Taxpayer's cost of approximately \$400.
20. That in Case Number 98R-140, the Taxpayer's requested value was \$2,503. (E19). That the Taxpayer acquired the property at the cost of approximately \$3,500. That there was a hotel on the property which the seller tore down for the old bricks.
21. That in Case Number 98R-141, the Taxpayer's requested value was \$1,441. (E35).
22. That in Case Number 98R-146, the Taxpayer's requested value was \$1,467. (E18). The Taxpayer acquired the property in approximately 1994 for approximately \$500 at a tax auction.

23. That in support of the requested values for the vacant lots the Taxpayer adduced evidence of two sales of vacant lots. One sale is the subject of Exhibits 10 and 11. That lot sold for \$700 in 1992. No property record card was adduced for this "comparable" as required by the Commission's Amended Order for Hearing. No evidence was adduced relating this 6-year old sale (as of the assessment date) to actual or fair market values as of the assessment date was provided.. That Taxpayer also purchased a vacant lot for \$500 in 1996. The sale was recorded in 1999. No property record card was adduced for this "comparable" as required by the Commission's Amended Order for Hearing. No evidence was adduced relating this 2-year old sale (as of the assessment date) to actual or fair market values as of the assessment date.
24. That in Case Number 98R-143, the Taxpayer's requested value was \$31,430. (E20). That the Taxpayer acquired the subject property in 1979 or 1980, and erected a structure on the property at the cost of approximately \$40,000. The structure is used for a production facility.
25. That in Case Number 98R-144, the Taxpayer's requested value was \$83,013. (E33). That the Taxpayer acquired the property and erected a structure on the property in the early 1980's at the cost of \$80,000. That the structure has not been improved since construction, and is utilized as a warehouse. That the improvements are used as a warehouse.
26. That in Case Number 98R-145, the Taxpayer's requested value was \$76,063. (E36). That the Taxpayer acquired the property and erected a structure on the property in approximately 1992 at a cost of \$120,000. The structure has not been improved since

construction, and is a building which is approximately 100' x 125' which is used as a production facility.

27. That from the record before it, the Commission finds and determines that the actual or fair market value of the subject properties as of January 1, 1998, was that amount determined by the County and as set forth below:

Case Number	County
98R-137	\$2,272
98R-138	\$2,272
98R-139	\$2,045
98R-140	\$3,314
98R-141	\$2,272
98R-143	\$39,542
98R-144	\$105,495
98R-145	\$97,088
98R-146	\$2,272

28. That the decisions of the County were neither unreasonable nor arbitrary.
29. That therefore the decisions of the County must be affirmed.

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 the appraisal of real estate is not an exact science. *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N. W. 2d 872, 874 (1977).
5. That generally, evidence as to the sale of comparable property is admissible as evidence of market value, provided there is adequate foundation to show the evidence is material and relevant. The foundation evidence should show the time of the sale, the similarity or dissimilarity of market conditions, the circumstances surrounding the sale, and other relevant factors affecting the market conditions at the time. *Wear v. State Dept. of Roads*, 215 Neb. 69, 337 N.W.2d 708 (1983). In condemnation proceedings where the value of real estate is in issue, evidence of particular sales of other land may not be introduced as independent proof on the question of value, unless foundation is laid

indicating that prices paid represented the market or going value of such land. *Timmons v. School Dist.*, 173 Neb. 574, 114 N.W.2d 386 (1962) *McArthur v. Papio-Missouri River Natural Resources Dist.*, 250 Neb. 96, _____, 547 N.W.2d 716, 724 (1996).

6. That "Comparing assessed values of other properties with the subject property to determine actual value has the same inherent weakness as comparing sales of other properties with the subject property. The properties must be truly comparable." *DeBruce Grain v. Otoe Cty. Bd. of Equal.*, 7 Neb. App., 688, 698 (1998).
7. That based on the record before the Commission, insufficient evidence has been adduced to establish that the action of the County in these appeals were unreasonable or arbitrary.
8. That as a matter of law the Taxpayer has NOT met the burden of persuasion as required by *Kawasaki Motors v. Lancaster Cty. Bd. Of Equal.*, 7 Neb. App. 655 (1998).
9. That based on the record before the Commission, the Commission must, and hereby does, conclude as a matter of law that the decisions of the County Board of Equalization which set the assessed value of the subject properties for tax year 1998 were neither unreasonable nor arbitrary.
10. That therefore the decision of the Jefferson County Board of Equalization must be affirmed.

ORDER

1. That the order of the Jefferson County Board of Equalization setting the assessed value of the subject properties for tax year 1998 is affirmed.

2. That Taxpayer's commercial real property in Jefferson County, Nebraska, shall be valued as follows for tax year 1998, as determined by the County:

a. That in Case Number 98R-137, the commercial real property legally described as Lot 8, Blk 16, McDowells 1st Add., F8, in the City of Fairbury, Jefferson County, Nebraska, shall be valued as follows:

i.	Land	\$2,272
ii.	Improvements	\$ -0-
iii.	Total	\$2,272

b. That in Case Number 98R-138, the commercial real property legally described as Lot 10, McDowells 1st Add., F8, in the City of Fairbury, Jefferson County, Nebraska, shall be valued as follows:

i.	Land	\$2,272
ii.	Improvements	\$ -0-
iii.	Total	\$2,272

c. That in Case Number 98R-139, the commercial real property legally described as PT W 45' Lot 12, Blk 16, McDowells 1st Add., F8, in the City of Fairbury, Jefferson County, Nebraska, shall be valued as follows:

i.	Land	\$2,045
ii.	Improvements	\$ -0-
iii.	Total	\$2,045

d. That in Case Number 98R-140, the commercial real property legally described as TL 2 Lot 8 and TL 2 Lot 9, Blk 17, McDowells 1st Add., F8, in the City of Fairbury, Jefferson County, Nebraska, shall be valued as follows:

i.	Land	\$3,314
ii.	Improvements	\$ -0-
iii.	Total	\$3,314

e. That in case Number 98R-141, the commercial real property legally described as Lot 10, Blk 17, McDowells 1st Add., F8, in the City of Fairbury, Jefferson County, Nebraska, shall be valued as follows:

i.	Land	\$2,272
ii.	Improvements	\$ -0-
iii.	Total	\$2,272

f. That in Case Number 98R-143, the commercial real property legally described as Lot 11, Blk 16, McDowell's's 1st Add., F8, in the City of Fairbury, Jefferson County, Nebraska, shall be valued as follows:

i.	Land	\$ 2,272
ii.	Improvements	\$37,270
iii.	Total	\$39,542

g. That in Case Number 98R-144, the commercial real property legally described as PT E 5' Lot 12, and all of Lot 13 and Lot 14, Blk 16, F8, in the City of Fairbury, Jefferson County, Nebraska, shall be valued as follows:

i.	Land	\$ 4,771
ii.	Improvements	\$100,724
iii.	Total	\$105,495

h. That in Case Number 98R-145, the commercial real property legally described as Lots 4 through 7, Blk 17, F8, in the City of Fairbury, Jefferson County, Nebraska, shall be valued as follows:

i.	Land	\$ 9,088
ii.	Improvements	\$88,000
iii.	Total	\$97,088

i. That in Case Number 98R-146, the commercial real property legally described as Lot 1, Blk 37, OT Fairbury, F8, in the City of Fairbury, Jefferson County, Nebraska, shall be valued as follows:

i.	Land	\$2,272
ii.	Improvements	\$ -0-
iii.	Total	\$2,272

3. That these decisions, if no appeal is filed, shall be certified to the Jefferson County Treasurer, and the Jefferson County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).

4. That these decisions 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 5th day of October, 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 6th day of October, 1999.

SEAL



Mark P. Reynolds, Chairman