

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

TWIN OAKS MOBILE HOME ESTATES,)		CASE NO. 98C-51
INC.,)		98C-93
)	98C-94
Appellant,)		98C-95
)	98C-96
vs.)		
)	
SEWARD 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 28th day of July, 1999, pursuant to a Second Amended Order for Hearing and Second Notice of Hearing issued the 18th day of June, 1999.

Twin Oaks Mobile Home Estates, Inc. ("Taxpayer") appeared at the hearing through Robert Dittoe and Connie Ditto, officers of the corporation, and through counsel, John M. Boehm, Attorney at Law. The Seward County Board of Equalization appeared through James Ruby, Seward 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. The hearing was recessed at the close of the Taxpayer's case, and the hearing reconvened on August 2, 1999.

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 properties located in Seward County, Nebraska ("subject property").
2. That the Seward County Assessor ("Assessor") proposed valuing the subject properties in the amounts shown below for purposes of taxation as of January 1, 1998 ("assessment date").
3. That Taxpayer timely filed a protest of the proposed valuation, and requested that the subject properties be valued in the amounts shown below.
4. That the basis of the protest was the allegation that the subject properties were overvalued.
5. That the County denied the protest and determined the value of the subject property in the amounts shown below (under the column headed "Board").

FILE # 98C-51

Legal Lots C & G in Replat of Lots 5 & 8, Twin Oaks Development, NE
¼ 32-11-3 (5.785 acres)

	<u>Assessor</u>	<u>Taxpayer</u>	<u>Board</u>	
Land	\$173,205	\$133,236	\$173,205	
Improvements	\$123,350	\$ 60,249	\$123,330	
Total	\$296,535	\$193,485	\$296,535	(E1)

FILE # 98C-93

Legal Mobile Home located on Lot 7, Twin Oaks Development

	<u>Assessor</u>	<u>Taxpayer</u>	<u>Board</u>	
Land	\$-0-	\$-0-	\$-0-	
Improvements	\$4,328	\$1,500	\$4,328	
Total	\$4,328	\$1,500	\$4,328	(E2)

FILE # 98C-94

Legal Mobil Home located on Lot 7A, Twin Oaks Development

	<u>Assessor</u>	<u>Taxpayer</u>	<u>Board</u>	
Land	\$-0-	\$-0-	\$-0-	
Improvements	\$4,025	\$2,200	\$4,025	
Total	\$4,025	\$2,200	\$4,025	(E3)

FILE # 98C-95

Legal Mobile Home located on Lot 10A, Twin Oaks Development

	<u>Assessor</u>	<u>Taxpayer</u>	<u>Board</u>	
Land	\$-0-	\$-0-	\$-0-	
Improvements	\$8,528	\$3,800	\$8,528	
Total	\$8,528	\$3,800	\$8,528	(E4).

FILE # 98C-96

Legal Mobile Home located on Lot 28, Twin Oaks Development

	<u>Assessor</u>	<u>Taxpayer</u>	<u>Board</u>	
Land	\$-0-	\$-0-	\$-0-	
Improvements	\$6,563	\$1,500	\$6,563	
Total	\$6,563	\$1,500	\$6,563	(E5).

- 6. That after the County's action, 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 Taxpayer acquired the subject property in 1990 for approximately \$200,000.
- 2. That Taxpayer adduced evidence of actual or fair market value of the land component of the mobile home park in the form of an appraisal by an expert, licensed appraiser. (E6).
 That the Appraiser holds a "Certified General" Appraiser's License issued by the State of Nebraska. That the Appraisal is a "limited" and "restricted" appraisal. (E6:2).

3. That the Taxpayer's appraisal considered only the "Income Approach." That "fee" appraisals usually require the appraiser to consider all three approaches to value. (*Uniform Standards of Professional Appraisal Practice, ("USPAP") 1999, Standards Rule 1-4, p. 16.*) That departure from this requirement requires notice in the form of Departure Rule. (*USPAP, at p. 6.*) That the Appraiser invoked the Departure Rule. (E6:11).
4. That the Taxpayer's appraisal had an effective date of February 2, 1999. (E6:2). That the results of the appraisal were not correlated to the assessment date of January 1, 1998.
5. That the Taxpayer's appraisal, in utilizing the "Income Approach," used "actual" income and "expenses" from Taxpayer. However, the Taxpayer's Appraiser was not provided with the information set forth in Exhibits 9, 10, 11, and 12. That the information set forth in those exhibits demonstrates that the Taxpayer is commingling expenses of Twin Oaks Mobile Home Park, Inc., Twin Oaks Utilities, "You're Half Real," 502 and 522 East Beck, 501 West Harvest, and a farm. That the principals of the corporation have an interest in each of these properties. That the explanations offered for these expenses charged against the properties which are the subject of these appeals are not credible.
6. That from the record before the Commission, the expenses attributed to the subject properties are **not** "the reasonable and typical expenses necessary to support and maintain the income-producing capacity of the property." *Property Assessment Valuation, 2nd Ed., p. 204.* That only the reasonable and typical expenses necessary to support and maintain the income-producing capacity of the property can be considered under both professionally accepted "fee" and "mass" appraisal practices.

7. That Taxpayer made reference to income and expenses of the subject properties as reported in Taxpayer's federal tax return for tax year 1996. That Taxpayer's federal tax return for tax year 1996 was not made a part of the record. That Taxpayer obtained an extension for its 1997 federal tax return, and therefore no income or expense information as reported in its federal tax return was provided for tax year 1997. Further that "the income and expenses that are proper and acceptable for income tax purposes are not the same as those that are appropriate for the income approach." *Property Assessment Valuation, 2nd Ed.*, p. 204. That operating expenses which are appropriate under professionally accepted mass appraisal practices are itemized in *Property Assessment Valuation, 2nd Ed.*, at page 214.
8. That the Taxpayer testified that the cost to cure "code" problems (i. e., "burying" the mobile homes) was \$5,000 per lot. That Taxpayer testified that 4 of the lots had been "cured" of the "code" problem, and 4 were in process. That assuming that all 8 had been "cured" as of the assessment date (which the record does not support), then \$40,000 worth of repairs should be attributed as a **non**-typical expense. That the net income attributed to the subject property dropped from \$36,847 in tax year 1996, to \$14,505 in tax year 1997. (E6:13). That the record does not establish why there was such a dramatic decrease in the income attributable to the subject property.
9. That the income approach is used in "predicting the stabilized annual net income that the property is expected to produce, assuming competent management and a typical year." *Property Assessment Valuation, 2nd Ed.*, p. 215. No credible evidence of "stabilized annual net income" or "typical" expenses was adduced by Taxpayer.

10. That Taxpayer contends that actual expense and actual income should be utilized in valuing the subject property. That a fee appraisal would require actual income and expenses for the subject property be utilized. However, a fee appraisal, under USPAP, would also ordinarily require a "cost approach" and "income approach" be made for the subject property. That on Taxpayer's explicit instructions, those two approaches were not used for the subject property.
11. That Taxpayer's own expert testified he could make no sense of Exhibits 9, 10, 11, and 12, and that he did not use them. He then testified that he prepared Exhibit 37 based on those exhibits. That he also used a capitalization rate of 14.50%, which was not independently determined, but was solely based on the County's evidence. That "a small difference in the capitalization rate will result in estimates differing by thousands of dollars." *Property Assessment Valuation*, 2nd Ed., p. 233. That based on this exhibit Taxpayer's expert revised his opinion of value (with an effective date of February 2, 1999) to \$239,000. (E37). That in correlating this opinion of value to the assessment date, Taxpayer's expert testified that in his opinion the actual or fair market value under his income approach was \$240,00.
12. That from the record before the Commission, Taxpayer's basis for its opinion of value under the "Income Approach" is flawed, and is not credible.
13. That the Taxpayer's expert offered an opinion of value for the mobile home park the valuation of which is at issue in this appeal. That Taxpayer's expert did not offer an opinion of value for the mobile homes the valuation of which are at issue here. That the mobile homes at issue were all rented as of the assessment date, for a monthly rent of

\$275 to \$315. That the rental income supports the County's opinion of value.

14. That the County retained the services of a "Certified General" appraiser licensed by the State of Nebraska to assist the Assessor in the appraisal of commercial property within the County for tax year 1998. That this expert determined an opinion of value for the subject properties for tax year 1998. That the County's Expert utilized the "Cost Approach" to determine an opinion of value. That this expert corroborated this opinion of value using the "Income Approach" and the "Sales Comparison" approach. That all three of these approaches are professionally accepted mass appraisal methodologies. (Neb. Rev. Stat. §77-112 (1998 Cum. Supp.)).
15. That the County's expert later revised his opinion of value under the "Income Approach" for the mobile home park. That this later opinion resulted in a higher value. That this higher value resulted from a change in the expense ratio (from an original 30% expense ratio to a 60% ratio), from a change in the number of lots (from 38 to 40), a change in "overall rate" (the capitalization rate used from 14.50% to 8.29% and 8.37%), and from a change in the income attributed to the subject property.
16. That from the record before the Commission, the subject property was licensed for 40 lots as of the assessment date.
17. That the County, in its revised opinion of value, added income to the subject property which is properly attributed to Twin Oaks Utilities, not the Taxpayer.
18. That the County's expert placed the greatest weight on the "Cost approach." That the "Cost Approach" yielded the lowest indicated value. That although the "Cost Approach" does not appear to be the "best" valuation methodology under the facts of this case, that

approach is specifically authorized by Neb. Rev. Stat. §77-112 (1998 Cum. Supp.).

19. That the Taxpayer challenged the valuation of the mobile home park alleging that the swimming pool was "permanently discontinued and to be dismantled." (E1). That the uncontroverted evidence before the Commission is that the pool was licensed as of the assessment date and had been used in calendar year 1997, which was the calendar year immediately prior to the assessment date. Further that the County utilized a 60% seasonal depreciation factor for the pool.
20. 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, were as follows:

Case No. 98C-51 Mobile Home Park	\$296,535
Case No. 98C-93 Mobile Home	\$ 4,328
Case No. 98C-94 Mobile Home	\$ 4,025
Case No. 98C-95 Mobile Home	\$ 8,528
Case No. 98C-96 Mobile Home	\$ 6,563
21. That the decision of the County was neither unreasonable nor arbitrary.
22. That therefore the decision 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 based on the record before the Commission, insufficient evidence has been adduced to establish that the action of the County in this case was unreasonable or arbitrary.
5. 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).
6. 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).
7. 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 Seward County Board of Equalization which set the assessed value of the subject properties for tax year 1998 was neither unreasonable nor arbitrary.

8. That therefore the decision of the Seward County Board of Equalization must be affirmed.

ORDER

1. That the order of the Seward County Board of Equalization setting the assessed value of the subject property for tax year 1998 is affirmed.
2. That Taxpayer's commercial real property located in Seward County, Nebraska, shall be valued as follows for tax year 1998, as determined by the Seward County Board of Equalization :

<u>Case No.</u>	<u>Description</u>	<u>Value</u>	<u>Assessor's ID #</u>
98C-51	Mobile Home Park	\$296,535*	800040880
98C-93	Mobile Home	\$ 4,328**	800202155
98C-94	Mobile Home	\$ 4,025**	800202163
98C-95	Mobile Home	\$ 8,528**	800202171
98C-96	Mobile Home	\$ 6,563**	800202287

* Land and Improvements

**Improvement only

3. That this decision, if no appeal is filed, shall be certified to the Seward County Treasurer, and the Seward 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 2nd day of August, 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 3rd day of August, 1999.

SEAL





Mark P. Reynolds, Chairman