

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

FRANK KORANDA,)

Appellant,)

vs.)

SAUNDERS COUNTY BOARD OF
EQUALIZATION,)

Appellee.)

CASE NO. 99R-71

**DOCKET ENTRY
REVERSING THE DECISION
OF THE COUNTY**

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 24th day of February, 2000, pursuant to a Notice of Hearing issued the 22nd day of November, 1999.

Frank Koranda and Deb Koranda ("Taxpayer") appeared personally at the hearing, and the Saunders County Board of Equalization appeared through Grant A. Porter, Deputy Saunders 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 rural residential real property located in Saunders County, Nebraska ("subject property").
2. That the Saunders County Assessor ("Assessor") proposed valuing the subject property in the amount of \$116,110 for purposes of taxation as of January 1, 1999 ("assessment date"). (E1).
3. That Taxpayer timely filed a protest of the proposed valuation, and requested that the subject property be valued in the amount of \$92,000. (E1).
4. That the basis of the protest was the allegation that the assessed value of the property was not equalized with comparable property. (E1).
5. That the County denied the protest, and raised the assessed value of the subject property to \$131,520. (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 Taxpayer acquired the subject property in September, 1998, for \$137,000. That the Taxpayer filed a protest with the County. That the County retained the services of a Referee to assist in the protest process for tax year 1999.

2. That at the hearing before the County, the County's Appraiser recommended that the sale price of the property (\$137,000) be multiplied by 96% (the County's calculated median level of assessment for the residential class of property for tax year 1999). That the County's Appraiser recommended that the resulting value (\$131,520) be adopted by the County as the assessed value of the subject property. That the County adopted the recommendation of the County's Appraiser.
3. That the County, for rural residential property, doubled the assessed value of the house over the prior year's assessment, and the value of the land component of rural residential property was also increased for tax year 1999.
4. That from the record before the Commission, the subject property was the only property sold in 1998 which the County raised to 96% of the sale price.
5. That the assessment function in Saunders County was assumed by the State of Nebraska in 1999.
6. That the purchase of the subject property was an arm's length transaction. That therefore the actual or fair market value of the subject property as of the assessment date was \$137,000.
7. That neither the assessing official nor her deputy inspected the subject property for tax year 1999. Further that from the record before the Commission, the subject property has not been inspected for at least nine years.
8. That based on the entire record before it, the Commission finds and determines that the actual or fair market value of the subject property as of January 1, 1999, was \$137,000.

9. That however, the equalized value of the subject property as of the assessment date should have been \$116,110.
10. That therefore decision of the County was both unreasonable and arbitrary.
11. That therefore the decision of the County must be vacated and 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. §77-5016(7) (1999 Supp.) 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 . . . In an appeal to the [Commission from the County Board of Equalization] . . . the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to

valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment.” *U.S. Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 588 N.W.2d 575 (1999).

4. That the Nebraska Supreme Court has determined that “(w)here the county assessor does not act upon his own information, or does not make a personal inspection of the property, any presumption as to the validity of the official assessment does not obtain.” *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 580, 144 N.W. 2d 161, 169 (1966).
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 “Evidence of sale price alone may not be sufficient to overcome the presumption that the board of equalization has valued the property correctly. But where, as in this case, the evidence discloses the circumstances surrounding the sale and shows that it was an arm’s length transaction between a seller who was not under compulsion to sell and a buyer who was not compelled to buy, it should receive strong consideration.” *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982).
7. That “Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.” *Scribante v. Douglas Cty. Bd. of Equal.*, 8 Neb.App. 25, 588 N.W.2d 190 (1999).

8. That "The purpose of equalization of assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that no one part is compelled to pay a disproportionate share of the tax . . . Where it is impossible to secure both the standards of the true value of a property for taxation and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. However, the burden is on the taxpayer to show by clear and convincing evidence that the valuation placed upon the taxpayer's property when compared with valuation placed on other similar property is grossly excessive." *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582 (1999).
9. That based on the entire record before the Commission, clear and convincing evidence has been adduced to establish that the action of the County in this case was both unreasonable and arbitrary.
10. That as a matter of law the Taxpayer has met the burden of persuasion as required by *U.S. Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 588 N.W.2d 575 (1999).
11. That based on the entire record before the Commission, the Commission must, and hereby does, conclude as a matter of law that the decision of the Saunders County Board of Equalization which set the assessed value of the subject property for tax year 1999 was both unreasonable and arbitrary.

- 12. That therefore the decision of the Saunders County Board of Equalization must be vacated and reversed.

ORDER

- 1. That the order of the Saunders County Board of Equalization setting the assessed value of the subject property for tax year 1999 is vacated and reversed.
- 2. That Taxpayer's residential real property in Saunders County, Nebraska, shall be valued as follows for tax year 1999:

Land	\$ 19,000
Improvements	\$ 97,110
Total	\$116,110

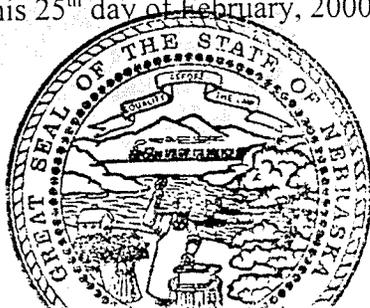
- 3. That this decision, if no appeal is filed, shall be certified to the Saunders County Treasurer, and the Saunders County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
- 4. That this decision shall only be applicable to tax year 1999.
- 5. That each party is to bear its own costs in this matter.

IT IS SO ORDERED.

I certify that Commissioner Edwards made and entered the above and foregoing Findings and Orders in this appeal on the 24th day of February, 2000. The same were approved and confirmed by Commissioner Hans, and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5). (1998 Cum. Supp.)

Signed and sealed this 25th day of February, 2000.

SEAL



Mark P. Reynolds, Chairman