

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

MELVIN L. WALLING,)

Appellant,)

vs.)

SARPY COUNTY BOARD OF
EQUALIZATION,)

Appellee.)

CASE NO. 99R-87

FINDINGS AND ORDERS
(STIPULATION AT HEARING)

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 Omaha, Douglas County, Nebraska, on the 23rd day of March, 2000, pursuant to a Notice of Hearing issued the 7th day of December, 1999.

Melvin L. Walling ("the Taxpayer") appeared personally at the hearing, and the Sarpy County Board of Equalization ("County") appeared through Michael A. Smith, Deputy Sarpy County Attorney. Each of the parties was afforded the opportunity to present evidence and argument. During the course of the hearing the Parties entered into a stipulation regarding the assessed value of the subject property for tax year 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, based on the stipulation offered by the Parties, finds and determines as follows:

**I.
FINDINGS OF FACT**

1. That the Taxpayer is the owner of record of certain real property as legally described in the petition ("the subject property").
2. That the Sarpy County Assessor ("the Assessor") proposed valuing the subject property in the amount of \$24,998 for purposes of taxation as of January 1, 1999 ("the assessment date").
3. That Taxpayer timely filed a protest of the proposed valuation, and requested that the value of the subject property be reduced.
4. That the basis of the protest was the allegation that the subject property was overvalued.
5. That the County denied the protest.
6. That thereafter, the Taxpayer timely filed an appeal of the County's decision to the Commission.
7. That at the hearing on the merits of the appeal, the Parties stipulated that the actual or fair market value of the subject property as of the assessment date was \$9,879.
8. That therefore the Commission finds and determines that the actual or fair market value of the subject property as of the assessment date was \$9,879.
9. That therefore the assessed value of the subject property for tax year 1999 as determined by the County (\$24,998) is not supported by the evidence.
10. That the stipulation of the Parties constitutes clear and convincing evidence which establishes that the action of the County was unreasonable and arbitrary, and further that the valuation decision of the County was unreasonable.

11. That therefore the decision of the County must be vacated and reversed.

II. 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." *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).
4. That "Ordinarily, a stipulation entered by the parties to a proceeding or by their attorneys within the scope of authority for representation of the parties, establishes the fact or facts stipulated and binds the parties." *Ehlers v. Perry*, 242 Neb. 208, 218, 494 N.W.2d 325, 333 (1993) (Citations omitted).

5. That as a matter of law the Taxpayer has met the burden of persuasion as required by *US Ecology, supra*.
6. That therefore the decision of the Sarpy County Board of Equalization must be vacated and reversed.

**III.
ORDER**

1. That the order of the Sarpy County Board of Equalization setting the assessed value of the subject property for tax year 1999 at \$24,998 is vacated and reversed.
2. That Taxpayer's real property legally described as Lot 17, Hocter Terrace, in Sarpy County, Nebraska, shall be valued as follows for tax year 1999:

| | |
|--------------|---------|
| Land | \$6,000 |
| Improvements | \$3,879 |
| Total | \$9,879 |
3. That this decision, if no appeal is filed, shall be certified within thirty days to the Sarpy County Treasurer, and the Sarpy 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.

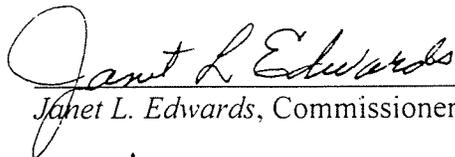
Dated this 27th day of March, 2000.



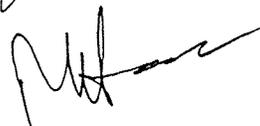
Seal



Mark P. Reynolds, Chairman



Janet L. Edwards, Commissioner



Robert L. Hans, Commissioner