

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

RALPH E. MOELLER AND)	
ROBERTA K. MOELLER,)	
)	CASE NO. 97R-21
Appellants,)	
)	
v.)	- DOCKET ENTRY
)	REVERSING DECISION
THAYER COUNTY BOARD)	OF APPELLEE
OF EQUALIZATION,)	
)	
Appellee.)	

The Nebraska Tax Equalization and Review Commission ("Commission") called the above-captioned case for hearing on the merits in the City of Grand Island, Hall County, Nebraska, on the 21st day of May, 1998, pursuant to an Amended Notice of Hearing issued the 11th day of May, 1998.

Appellants appeared personally at the hearing, and Appellee appeared through counsel. 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.

During the course of the hearing, the Appellee offered to stipulate that the case be submitted for decision on the facts and evidence presented in a related case, *Lester D. Messing and Vernida J. Messing v. Thayer County Board of Equalization*, Commission Case Number 97R-30. The Appellee further offered to stipulate that the Commission enter the same Findings of Fact, Conclusions of Law, and a Final Order in this case as it did in the *Messing* case. Appellee accepted both stipulations.

Neb. Rev. Stat. §77-5018 (1997 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 found and determined as follows:

- I. That Appellants are the owners of record of certain residential real property as described in the petition in this case.
- II. That Appellants timely filed a protest of the assessed value of their property for tax year 1997.
- III. That the basis for the protest was the allegation that they would accept the 1997 valuation of the subject property if no other residential real property in the Village of Gilead was reduced for any reason.
- IV. That the County Assessor proposed valuing the property at \$22,174 for the purposes of taxation.
- V. That the Appellant requested that the property be valued at \$17,298 for purposes of taxation.
- VI. That the Appellee denied the protest.

- VII. That Appellants thereafter timely filed an appeal of that decision to the Commission.
- VIII. That the comparable property ID#850060109 had a building permit for a basement construction 24' x 34' issued in the amount of \$16,900.
- IX. That the County Contract Appraiser testified that upon his inspection of the comparable property in two separate visits he found nothing that would cause him to change his opinion of value as originally stated.
- X. That the recommendation of the Contract Appraiser and the County Assessor for the comparable property, ID# 850060109, was "no change" during the protest process.
- XI. That from the record before the Commission the Appellant has established by a preponderance of the evidence that the decision of the Appellee was both unreasonable and arbitrary.
- XII. That therefore the assessed value of the subject property as determined by the Appellee for tax year 1997 is not supported by the evidence.

CONCLUSIONS OF LAW

- I. That the Commission has jurisdiction over the parties and the subject matter of this appeal.
- II. That the Commission is required by Neb. Rev. Stat. §77-1511 (Reissue 1996) to affirm the decision of the Appellee unless evidence is adduced establishing that the action of the Appellee was unreasonable or arbitrary.

- III. That the County Assessor is required by Nebraska State Statute to pass an examination in order to file for the Office of County Assessor and is required to take courses of study annually.
- IV. That the Nebraska Supreme Court has uniformly held that in proceedings before the County Board of Equalization the valuation made and returned by the County Assessor is presumed to be correct. (*Woods v. Lincoln Gas and Electric Co.*, 74 Neb. 526, 527, (1905); *Brown v. Douglas County*, 98 Neb. 299, 303 (1915); *Gamboni v. County of Otoe*, 159 Neb. 417, 431, 67 N. W. 2d 489, 499 (1954); *Ahern v. Board of Equalization*, 160 Neb. 709, 711, 71 N. W. 2d 307, 309 (1955)). That presumption accorded to the assessments made by the county assessor by the Nebraska Supreme Court must be accorded to the county assessors of this state by the various County Boards of Equalization.
- V. That as a matter of law the Appellant has established by a preponderance of the evidence that the action of the Appellee was unreasonable and arbitrary.
- VI. 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 Thayer County Board of Equalization which set the assessed value of the subject property for purposes of taxation at \$22,174 for tax year 1997 was both unreasonable and arbitrary.
- VII. That therefore the decision of the Thayer County Board of Equalization must be vacated and reversed.

ORDER

- I. That the order of the Thayer County Board of Equalization setting the assessed value of the subject property for tax year 1997 at \$22,174 is vacated and reversed.
- II. That Appellants' real property legally described as S 12 ½ feet, Lot 11, and all of Lots 12 and 13, in Blk 4, O. T. Gilead, Thayer County, Nebraska, shall be valued as follows for tax year 1997:

Land	\$ 475	(To equalize the subject property with the comparable property , a factor of minus 29.42% on the improvement was used to reach the final value.)
Improvements	\$15,315	
Total	\$15,790	
- III. That this decision, if no appeal is filed, shall be certified within thirty days to the Thayer County Treasurer, and the Thayer County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
- IV. That this decision shall only be applicable to tax year 1997.
- V. That each party is to bear its own costs in this matter.

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 21st day of May, 1998, and are therefore deemed to be the Order of Commission in this case, pursuant to Neb. Rev. Stat. §77-5005 (Reissue 1996).

Signed and sealed this 5th day of June, 1998.

SEAL



Mark P. Reynolds, Chairman