

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

LARRY J. FIESE, )

Appellant, )

vs. )

LINCOLN COUNTY BOARD OF )  
EQUALIZATION, )

Appellee. )

CASE NO. 97R-425

**DOCKET ENTRY  
AFFIRMING DECISION  
OF 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 26<sup>th</sup> day of January, 1999, pursuant to a Notice of Hearing issued the 2nd day of November, 1998.

Larry J. Fiese appeared personally at the hearing, and the County appeared through the Deputy Lincoln 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 found and determined as follows:

1. That, from the record before the Commission, Larry J. Fiese may not be the owner of record of the "subject property," a certain mobile home on Lot 5, Addition 2, Section 9, Jeffrey Lake, (an improvement on leased land) in Lincoln County, Nebraska.
2. That, from the record before the Commission, the owner of the mobile home, a 1993 Westwind, Serial Number W-3750, is Jason L. Fiese, Larry J. Fiese's son.
3. That the County Assessor proposed valuing the modular home for purposes of taxation for tax year 1997 in the amount of \$31,595. (E22).
4. That Appellant timely filed a protest of that determination of value to the Lincoln County Board of Equalization ("County").
5. That the basis for the protest was the allegation that the mobile home was overvalued.
6. That the Appellant requested that the property be valued at \$17,000 for purposes of taxation.
7. That the County granted the protest in part, and reduced the assessed value to \$27,380. (E1).
8. That the Appellant thereafter timely filed an appeal of that decision to the Commission.
9. That the modular home was purchased new in 1993 for \$30,381.
10. That the Appellant's "comparables" are from a different county. That no evidence was adduced to establish that the market area of Dawson County is comparable to the market area around Jeffrey Lake in Lincoln County.

11. That the County's expert, a licensed appraiser, testified that in his professional opinion the actual or fair market value of the modular home was approximately \$32,000 for 1997.
12. That from the record before it, the Commission finds and determines that the actual or fair market value of the modular home as of January 1, 1997, was \$32,000.
13. That therefore the assessed value of the modular home for tax year 1997 (\$27,380) is supported by the evidence.
14. That insufficient evidence has been adduced to establish that the decision of the County was unreasonable or arbitrary.

#### 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 “buildings” are real property. Neb. Rev. Stat. §77-103 (Reissue 1996).
5. That the Assessor is required by law to assess all real property as of the assessment date. Neb. Rev. Stat. §77-201 (Reissue 1996); Neb. Rev. Stat. §77-1301(1) (Reissue 1996); and Neb. Rev. Stat. §77-1311 (Reissue 1996).
6. That if the Assessor fails to comply with state law, he or she is subject to removal from office. Neb. Rev. Stat. §77-378 (Reissue 1996).
7. That therefore the shed is real property, it was in place on January 1, 1998, and must be assessed for purposes of taxation.
8. That the Parties must, by law, be afforded the opportunity to cross-examine the witnesses of the opposing party. Neb. Rev. Stat. §77-5016 (Reissue 1996).
9. That the Appellant’s Exhibits 6 and 18 purport to give evidence in the form of written testimony to the Commission.
10. That the authors of these exhibits are not personally present in the hearing room. If these exhibits were considered by the Commission, the County would be denied its statutory right to cross-examine those witnesses. The Commission cannot therefore consider the information set forth in those exhibits.
11. That Exhibit 20 is not relevant to the issues before the Commission. The Commission cannot therefore consider the information set forth in that exhibit.

12. That cost is not synonymous with value. That "It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value." *Forney v. Box Butte Cty. Bd. Of Equal.*, 7 Neb. App. 417 (1998).
13. 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).
14. That the prior years assessment is not relevant to the subsequent year's valuation. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N. W. 2d 451 (1944).
15. 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.
16. That as a matter of law the Taxpayers have NOT met their burden of proof as required by *Kawasaki Motors v. Lancaster Cty. Bd. Of Equal.*, 7 Neb. App. 655 (1998).
17. 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 Lincoln County Board of Equalization setting the assessed value of the modular home in the amount of \$27,380 for tax year 1997 was neither unreasonable nor arbitrary.
18. That therefore the decision of the Lincoln County Board of Equalization must be affirmed.

**ORDER**

1. That the order of the Lincoln County Board of Equalization setting the assessed value of the modular home for tax year 1997 in the amount of \$27,380 is affirmed.
2. That the real property located on Lot 5, Addition 2, Section 9, Jeffrey Lake, Lincoln County, Nebraska, shall be valued as follows for tax year 1997:
 

Land	None
Improvements	\$27,380
Total	\$27,380
3. That this decision, if no appeal is filed, shall be certified to the Lincoln County Treasurer, and the Lincoln 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 26<sup>th</sup> day of January, 1999, 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 28<sup>th</sup> day of January, 1999.



*Mark P. Reynolds, Chairman*