

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

B & H COMPANY,	)	
	)	Case No. 97R-267
	)	
Appellant,	)	
	)	
vs.	)	FINDINGS AND ORDERS
	)	
	)	
SALINE COUNTY BOARD OF EQUALIZATION,	)	
	)	
Appellee.	)	

Filed March 27, 1998

Appearances:

For the Appellant:	Mr. Donal D. Bayne 1290 Quince Street Crete, NE 68333-2163
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For the Appellee:	Mr. Tad Eickman Saline County Attorney P.O. Box 713 Wilber, NE 68465-0713
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Before: Commissioners Edwards, Hans and Reynolds

Edwards, Commissioner, for the Commission:

**SUMMARY OF DECISION**

The Commission reverses the decision of the Saline County Board of Equalization which denied Taxpayer's protest, and grants Taxpayer's request for a reduction in the assessed value of the subject property.

### NATURE OF THE CASE

B & H Company ("Taxpayer") owns certain commercial multi family real property located in the City of Crete, Saline County, Nebraska. Taxpayer filed a protest with the Saline County Board of Equalization ("County") alleging that subject property was valued too high based on the income stream. Taxpayer also alleged that his property is valued higher than comparable properties. The "percentages" used are not correct. By way of relief, Taxpayer requested that the proposed 1997 **building valuation only** of \$132,577 be reduced to \$92,606. County denied the protest, from which decision Taxpayer appeals.

### DUTIES OF THE PARTIES

A taxpayer who is dissatisfied with the county assessor's determination of assessed value of real property must file a written protest with County. Neb. Rev. Stat. §77-1502 (1997 Supp.).

A county board of equalization must, between June 1 and July 25 of each year, fairly and impartially equalize the values of all items of real property in the county "except agricultural and horticultural land . . ." so that all real property is assessed uniformly and proportionately. Neb. Rev. Stat. §77-1504 (1997 Supp.).

"For purposes of equalization of the valuation of any protested real property, the county board of equalization shall make its adjustment so that the value of the protested property compares to the average level of value of the class or subclass of property in which the protested property is categorized." Neb. Rev. Stat. §77-1504 (1997 Supp.).

### EVIDENCE BEFORE THE COMMISSION

Judicial notice was taken, without objection, of the pleadings in Case File 97R-267; the *Marshall Commercial Valuation Service*; the *Nebraska Assessor's Reference Manuals*, Volumes 1 and 2; the Nebraska Constitution; the Nebraska State Statutes; Title 442 of the Administrative Code (Tax Equalization and Review Commission's Rules and Regulations); the standard reference work *Property Assessment Valuation, Second Edition*; the standard reference work *Property Appraisal and Assessment Administration*; the standard reference work *Glossary for Property Appraisal and Assessment*; the Property Tax Division of the Department of Revenue's published 1997 ratios and measures of central tendency which are published pursuant to Neb. Rev. Stat. §77-1327(6); the 1997 County Profiles for Saline County; the 1997 Equalization Proceedings of the Tax Equalization and Review Commission; the *Uniform Standards of Profession Appraisal Practices*, 1997 Edition; *Title 298, Nebraska Administrative Code* (the Nebraska Real Estate Appraiser Board's Rules and Regulations); the Nebraska Real Estate Appraiser Board Certification Requirements; and the Nebraska Real Estate Appraiser Board Education Core Curriculum.

Judicial notice was taken of the case files, exhibits and evidence in the following cases which were consolidated for hearing and decision. Those cases are 97R-273; 97R-274; 97R-275, 97R-276, 97R-277; 97R-270; 97R-271, and 97R-272.

Taxpayer offered Exhibits One through Eleven and all were received without objection. County offered Exhibits Twelve through Twenty-Seven and all were received without objection.

## ANALYSIS

Taxpayer's main contention is that his commercial multi-family properties located in Crete, Nebraska "are valued higher than the income stream generated will support". He alleges that the whole problem is in the "percentages" used to determine assessed value. (The "percentages" referred to were determined to be the depreciation factors used by County under the cost approach in determining fair market value.) Taxpayer is a longtime resident of Crete. He owns approximately 168 rental units in the city of Crete, which comprises approximately 60% of the available rental units. He is one of the owners of the Crete Lumber yard, which permits him to purchase construction materials at cost plus. He is the owner of, partner in, or stock holder in, a number of corporations holding title to multi-family real property in Crete. He is a builder, has an interest in a real estate company, and is an active participant in the multi-family real estate market in Crete. Parties stipulated that there is no dispute over land value.

County was represented by the County Attorney and a Certified General Appraiser under contract to the county to value commercial properties. The Saline County Assessor was also present. County asserts that the commercial property in Crete is assessed at a uniform, reasonable and fair value. County defined the depreciation factors as they pertain to commercial real property in the county. There are designated commercial market areas as determined by the county assessor. When the commercial reappraisal was done in 1993, a base depreciation factor representing location/economic conditions was determined. A market depreciation study was completed and the appropriate factor assigned to each market area. Crete was assigned a base commercial depreciation factor of 20%.

County's "market depreciation study" (defined as depreciation using sales comparison method, page 156 of I.A.A.O. textbook, *Property Assessment Valuation*, Second Edition) , from the testimony heard, was based on professionally accepted mass appraisal techniques. An additional depreciation factor was added to the base factor to account for age, physical condition, and/or functional obsolescence. County testified those base depreciation factors were unchanged for 1997 assessment purposes.

County testified that they relied on the cost approach methodology to arrive at the replacement cost new (RCN). Appropriate depreciation is subtracted from RCN to determine the replacement cost new less depreciation(RCLND). The depreciated value of the improvements is then added to the value of the land to determine the fair market value (FMV) of the property. The depreciation factors are therefor a critical element of the cost approach to value.

County stated that the value of commercial properties in Crete, Nebraska is increasing. Testimony was offered that the County Assessor and County Board of Equalization personally viewed the properties under protest prior to making their final County Board of Equalization decisions. The Appraiser under contract to County testified that in the income approach method he used, the monthly rents tend to be on the high end of the range of market rents in Crete. The Analysis he presented in Exhibit #17 was based on nine apartment sales: one sale from Beatrice, one property in Crete that sold twice, and six sales from Seward. He established that both Crete and Seward had colleges, were in close proximity to Lincoln, had some large commercial operations and were not greatly different in population, Seward having a larger population of approximately 2,000 to 2,500. However, the market would appear to be different. Crete only had one sale in the last three years while Seward had at least the six listed by the Appraiser.

Several of the sales used in Exhibit 18 were outside of the sales time frame used by Assessors to set values. That time frame was set by the Property Tax Administrator in "1997 Standards for Measurement of Level of Value and Quality of Assessment", page 2, found in the Assessors' Reference Manual, Volume 1. That time frame was July 1, 1994 through June 30, 1996. Since sales one, two, three, six, seven, and eight were outside the designated sales time frame, the results could be skewed to reflect the increasing commercial market. No adjustments were made for time, location, nor any other factor according to the Appraiser. The Appraiser also used this sales analysis as the basis for the other properties under protest and appeal by Taxpayer. In response to questions, Appraiser stated he did not know about the storm drain under this property and did not determine what, if any, adverse effect the 36 inch (three foot) storm drain would have on the fair market value of the subject property.

The subject property, in the instant case, is a six plex with no garages. It was built in 1980 by the Taxpayer. Taxpayer owns a lumber yard, and built this unit with materials purchased from the lumber yard at a discount. It is built in the flood plain and has a thirty-six inch (three foot) reinforced concrete storm drain running directly under one corner of the building. This property's value may be adversely affected by the presence of the storm drain.

Taxpayer prepared a comparison approach using two multi family properties in Crete. One property is a six-plex and the other is a twelve plex while subject property is a six plex. Exhibit one shows the comparable chosen for the building at 735 East 18<sup>th</sup> Street in Crete, Nebraska (Exhibit #13). The subject property was built in 1980, this comparable was built in 1971. The second comparable property is located at 625 Forest Street. (Exhibit #14) It was built in 1975. The condition of the subject is "good", the comparables' conditions are "average".

Subject has a quality or "Cost Rank" of Average and both comparables also have quality or "Cost Rank" of Average. None of the properties have garages. Subject has added amenities of decks, covered patios, concrete pads, while subject properties have fewer of these amenities. Under professionally accepted mass appraisal methods, these comparables would not provide sufficient data from which to draw a competent conclusion. Furthermore, the "comparables" offered by Taxpayer are not "comparable" under professionally accepted mass appraisal methods. The standard reference work, *Property Assessment Valuation*, Second Edition at page 98, identifies "overall quality, age, size, amenities, functional utility, and physical condition" as appropriate elements of comparison. Differences between the subject property and the "comparable" property must be made through the use of adjustments. (*Property Assessment Valuation*, Second Edition, page 106.) Taxpayer made no adjustments for any of the differences between the subject and comparable properties to correlate the properties' values.

The record shows that the subject property was given the standard Crete commercial property economic depreciation of 20%, plus 15% physical depreciation for age and condition. No additional depreciation was given by the County for the location of the storm drain beneath the apartment building.

The unique situation in the instant case is that a **thirty-six inch (three foot) storm drain** runs under one end of the apartment building. Special footings accommodated the storm drain according to testimony. What unique problems may be inherent from that particular circumstance were not defined. No evidence was adduced to indicate the life of the storm drain, or the impact on the subject property if the storm drain required replacing or suffered severe damage or collapse. If the Income Approach to value were used, a prudent investor would be

aware of the storm drain beneath the building. That factor may affect the decision to invest or require some special considerations in the price paid or the financing arrangements. The risk element of the capitalization rate would also reflect those conditions, resulting in a lower value realized from the income stream. "A small difference in the capitalization rate will result in estimates differing by thousands of dollars." *Property Assessment Valuation*, Second Edition, pages 229-233. The market sales comparison approach would not be as reliable because the storm drain is a unique situation and there is no manner of determining what adjustment would be necessary to compensate for the storm drain or to what degree the market may react. The County did not address the problem of the storm drain. Even though no specific evidence was adduced by either party as to what the exact impact to the subject property's market value would be, it is reasonable to expect that having a thirty-six inch (three foot) storm drain directly beneath the apartment building would result in at least some additional depreciation factor. Due to the fact that the storm drain is not located under the center of the building, (see Case 97R-266) and the lack of specific data as to what dollar amount damage may occur, a minimal depreciation of 5% would acknowledge some negative impact to market value. Sufficient evidence was offered by Taxpayer to establish that the decision of County was arbitrary and unreasonable.

#### FINDINGS OF FACT

The Commission, in determining cases, is bound to consider only that evidence which has been made a part of the record before it. No other information or evidence may be considered. Neb. Rev. Stat. §77-5016 (3) (1997 Supp.). The Commission may, however, evaluate the evidence presented utilizing its experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016 (5) (1997 Supp.).

From the pleadings and the evidence contained in the record before it, the Commission finds and determines as follows:

1. That Taxpayer is the owner of record of certain commercial real property as described in the petition in this case.
2. That Taxpayer timely filed a protest of the assessed value of their property for tax year 1997.
3. That the basis for the protest was the allegation that subject property doesn't compare with similar property rents and income streams; and this property has the same issues impacting value as taxpayer's other properties which were protested before the County Board of Equalization.
4. That the County Assessor proposed valuing the property at \$142,211 for purposes of taxation.
5. That the Taxpayer requested that the property be valued at \$102,240 for purposes of taxation.
6. That the County denied the protest.
7. That Taxpayer thereafter timely filed an appeal of that decision to the Tax Equalization and Review Commission.
8. That Taxpayer is the owner of approximately 168 rental units (about 60% of the whole) in Crete, Nebraska.
9. That Taxpayer is one of the owners of Crete Lumber Company allowing him to purchase building materials at "cost-plus", which other contractors are not able to do.
10. That Taxpayer built the multi family six-plex in 1980.

11. That the subject property has a **thirty- six inch (three foot) storm drain** running directly under one end of the apartment building.
12. That County testified that the commercial market in Saline County over the past three years has been active with overall sales prices increasing.
13. That County testified that all Commercial property in Saline County was re-appraised in 1993 with the assistance of a contracted licensed appraiser.
14. That at the time of the appraisal a market depreciation study was completed to determine appropriate depreciation rates for commercial property, resulting in separate base depreciation factors assigned to each market area to reflect location and/or economic impact.
15. That the County Appraiser did not know about nor consider any adverse effect of the storm drain when he calculated the subject property valuation.
16. That sufficient evidence has been adduced to establish that the decision of the County was unreasonable and arbitrary.

#### **JURISDICTION**

Jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (1997 Supp.).

#### **STANDARD OF REVIEW**

The Commission must affirm the decision of the county board of equalization unless the appellant demonstrates by a preponderance of the evidence that the decision made by the county board of equalization was not governed by reason, was absurd, exceeded the bounds of reason or moderation, or was made in disregard of the facts or circumstances and without some basis

which would lead a reasonable person to the same conclusion. Title 442, Nebraska Administrative Code, Chapter 5, Section 018. *See also Harrison Square v. Sarpy Cty. Bd. Of Equal.*, 6 Neb. App. 454 (1998).

### CONCLUSIONS OF LAW

First, from the record before it, the Commission concludes as a matter of law that it has jurisdiction over both the parties and the subject matter of this appeal. The Commission further concludes as a matter of law that, pursuant to Title 442, Nebraska Administrative Code, the Taxpayer is required to establish by a preponderance of the evidence that the decision of the Saline County Board of Equalization was unreasonable or arbitrary. Finally, the Commission must, for the reasons set forth above, and pursuant to Neb. Rev. Stat. §77-1510 (Reissue 1996), hereby does conclude as a matter of law that from the record before the Commission the Taxpayer has met it's burden of proof, and therefore the decision of the Saline County Board of Equalization must be vacated and reversed.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That the decision of the Saline County Board of Equalization which denied Taxpayers' protest is vacated and reversed.
2. That Taxpayer's commercial real property known as 1620 Boswell, Crete, Saline County, Nebraska, shall be valued as follows for tax year 1997:

Land	\$ 9,634	** <i>Calculation: RCN =</i>	\$203,965
Improvements	**\$125,948	<i>Less County Depr. =</i>	\$132,577 (20% + 15%)
Total	\$135,582	<i>Less 5% Depr. =</i>	\$125,948

3. That this decision, if no appeal is filed, shall be certified within thirty days to the Saline County Treasurer, and the Saline County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
4. That this decision shall only be applicable to tax year 1997.
5. That each party is to bear its own costs in this matter.

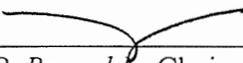
CHERSON UNIVERSITY

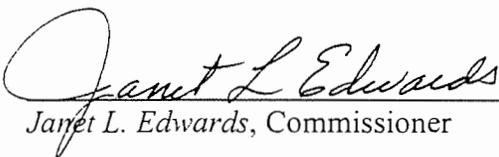
IT IS SO ORDERED.

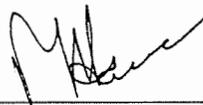
Dated this 27<sup>th</sup> day of March, 1998.



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*Mark P. Reynolds*, Chairman

  
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*Janet L. Edwards*, Commissioner

  
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*Robert L. Hans*, Commissioner