

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

IN THE MATTER OF THE PETITION OF )	Case Number 07CP-1
KEARNEY COUNTY, NEBRASKA, )	
BOARD OF EQUALIZATION TO )	FINDINGS AND ORDER
ADJUST VALUES BY A CLASS OR )	DENYING PETITION
SUBCLASS OF REAL PROPERTY )	

The Kearney County Board of Equalization (“the County Board”) petitioned the Tax Equalization and Review Commission (“the Commission”) to adjust the value of Summerhaven Lake leasehold interests in Kearney County for tax year 2007.

The Commission, upon receipt of the Petition, issued an Order for Hearing and Notice of Hearing on July 25, 2007. A copy of the Order and Notice was served on the County Board. The Commission called the matter for a hearing on the merits of the Petition in the City of Lincoln, Lancaster County, Nebraska, on July 31, 2007. Commissioners Warnes, Salmon, and Wickersham heard the petition. Commissioner Wickersham presided.

**I.  
ISSUE**

The only issue before the Commission is whether failure to make the requested adjustment would result in values which are not equitable and in accordance with the law. Neb. Rev. Stat. §77-1504.01 (Cum. Supp. 2006).

**II.  
APPLICABLE LAW**

1. Petitions concerning adjustments to the level of assessment of real property must be filed on or before July 26. Neb. Rev. Stat. §77-1504.01 (Cum. Supp. 2006).
2. The Commission must hear and act on a Petition for adjustment of value by class or

subclass brought by a County Board of Equalization on or before August 10. *Id.*

3. The Commission must base its orders on the evidence adduced during the hearing concerning the Petition and on that evidence adduced during the hearings held pursuant to Neb. Rev. Stat. §77-5022 (Cum. Supp. 2006).
4. The Commission may issue an order adjusting values by a percentage, and may exclude individual properties from the order adjusting values if the assessed values of those individual properties have already been adjusted by the Board as part of the protest proceedings. Neb. Rev. Stat. §77-1504.01 (Cum. Supp. 2006)
5. The County Board bears the burden of proof of demonstrating that failure to make the requested adjustment would result in values which are not equitable and in accordance with the law. Neb. Rev. Stat. §77-1504.01(2) (Cum. Supp. 2006).
6. Any Commission Order Adjusting Values must specify the percentage increase or decrease and the class or subclass of real property affected or any corrections or adjustments to be made to the class or subclass of real property. Neb. Rev. Stat. §77-1504.01(3)(Cum. Supp. 2006).
7. Any Order Adjusting Values must result in the level of value as determined for the affected class or subclass to fall at the midpoint of the acceptable range. Neb. Rev. Stat. §77-1504.01(3)(Cum. Supp. 2006) and Neb. Rev. Stat. §77-5023 (Cum. Supp. 2006)as amended by Neb. Laws 2007 L.B. 167 §9.
8. The acceptable range for the residential class of real property, and all subclasses thereof, is 92% to 100%. Neb. Rev. Stat. §77-5023 (2) (Cum. Supp 2006).

**III.  
FINDINGS OF FACT**

The Commission finds and determines that:

1. The *2007 Reports and Opinions of the Property Tax Administrator for Kearney County* shows that the median of the assessment to sales ratios for the residential class of real property within the Kearney County was 98%. (E50:41).
2. The *2007 Reports and Opinions of the Property Tax Administrator for Kearney County* shows that the median of the assessment to sales ratio for the assessor location Summerhaven subclass of the residential class of real property within Kearney County was 104.41%. (E50:41).

**IV.  
ANALYSIS**

Two members of the County Board testified that several protests of values assigned to leasehold interests in the Summerhaven Lake area were filed for the year 2007. The County Board members understood that the protestors believed their leasehold interest should not be subject to tax or in the alternative that double taxation would result because the owner of the leased fee was also being taxed. The County Board granted relief on the protests by adjusting the value of the leasehold interest to zero. The County Board in its petition alleges that a failure to adjust the remaining leasehold interests at Summerhaven Lake to zero will result in unequal assessment of real property in the Summerhaven Lake subclass.

All real property not expressly exempted is subject to taxation. Neb. Rev. Stat. 77-201 (Cum. Supp. 2006). Real property is defined as “(1) All land; (2) All buildings, fixtures, and improvements; (3) Mobile homes, cabin trailers, and similar property, not registered for highway

use, which are used, or designed to be used for residential, office, commercial, agricultural, or similar purposes, but not including mobile homes, cabin trailers, and similar property when unoccupied and held for sale by persons engaged in the business of selling such property when such property is at the location of the business; (4) Mines, minerals, quarries, mineral springs and wells, oil and gas wells, overriding royalty interests, and production payments with respect to oil and gas leases; and (5) All privileges pertaining to real property described in subdivisions (1) through (4) of this section.” Neb. Rev. Stat. § 77-103 (Reissue 2003). Privileges pertaining to real property means “the right to sell, lease, use, give away, or enter and the right to refuse to do any of these. All rights may or may not be vested in one owner or interest holder.” 350 Neb. Admin. Code, ch. 10, §001.01F (01/07). When land is leased two estates are created a leased fee and a leasehold interest. A leased fee interest is the lessor’s or landlord’s interest. *The Appraisal of Real Estate*, The Appraisal Institute, Twelfth Edition, 2001, p. 81. A leasehold estate is the lessee’s or tenant’s estate. *Id.* Both are interests in real estate and subject to taxation. See, *Omaha Country Club v. Douglas County Board of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002). Any determination that leasehold interests are not taxable would be contrary to law. Assessment of improvements on leased private land is governed by section 77-1375 and 77-1376 of Nebraska Statutes. Those sections cannot be read to prohibit the taxation of a leasehold interest. Section 77-1374 governs taxation of leasehold interests and improvements on public lands. None of the lands for which the County Board seeks an adjustment are public lands.

Another consideration of the County Board was possible double taxation. Double taxation should not occur as the leased fee and leasehold interest would be assessed based on the characteristics of each estate. A County Board member testified that the County Board

concluded that double taxation might be occurring because some fee interest lots at Summerhaven Lake were assessed at less than the \$32,000 assigned to leasehold interests. Some fee interest lots were assessed for more than \$32,000.00. (E189:1 and 2). The County Assessor testified that each lot was assessed based on square footage. It follows that if lots vary in their size the value determined by the County Assessor would have varied. No evidence of the actual value assigned to the leased fee interest was produced. Without evidence of the actual value determined for the leased fee interest it is impossible to conclude that double taxation occurred and that a compensating adjustment by a percentage is necessary to produce equitable values.

The County Board's petition requested an adjustment for a subclass of residential real property described as Summerhaven Lake through a 100% reduction in the value of the land component, a leasehold interest. The County Assessor testified that Summerhaven Lake as identified by the County Board was also assessor location Summerhaven as found on page 41 of the 2007 Reports and Opinions of the Property Tax Administrator. (E50). The level of value of a class of subclass of real property may be shown by analysis of measures of central tendency such as the median assessment to sale ratio. The median assessment to sale ratio for assessor location Summerhaven as shown in Exhibit 50 is 104.24. The County Assessor testified that if the adjustment to the land component, a leasehold interest, as proposed by the County Board was implemented that the median assessment to sales ratio for assessor location Summerhaven would be 62.85. The Commission can consider an adjustment to a component of actual value such as land but only for its effect on the total value of all component of actual value. See, *Bumgarner v. Valley County*, 208 Neb. 361, 303 N.W.2d 307 (1981). The Commission may not grant a petition if the proposed adjustment results in an indicated level of taxable value that does not

meet the requirements of section 77-5023 of Nebraska Statutes. Neb. Rev. Stat. 77-1504.01 (Cum. Supp. 2006). State law requires that any subclass of the class of residential real property have a level of value between 92% and 100% of actual value. Neb. Rev. Stat. §77-5023 (Cum. Supp. 2006). There is no evidence that application of the proposed adjustment would result in an indicated level of value at the midpoint of the acceptable range for the affected subclass or the class of residential real property in Kearney County.

The County Board must demonstrate by clear and convincing evidence that failure to make the requested adjustment would result in values that are not equitable and in accordance with the law. Neb. Rev. Stat. §77-1504.01(2) (Cum. Supp. 2006). State law requires that the Commission act within the powers granted in Section 77-5023. Neb. Rev. Stat. §77-1504.01(3) (Cum. Supp. 2006). State law further provides that an order adjusting values shall “cause the level of value determined by the Commission to be at the midpoint of the applicable acceptable range.” Neb. Rev. Stat. §77-5023(3) (Cum. Supp. 2006) as amended by Neb. Laws 2007 L.B. 167 §9. The acceptable range is from 92% top 100% of actual value. Neb. Rev. Stat. 77-5023 (2) (Cum. Supp. 2006). There is no evidence that any adjustment to the level of value for the Summerhaven Lake subclass of residential real property in Kearney County would satisfy the requirements of law for the year 2007. The Petition must accordingly be denied.

**V.**  
**CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the Board and over the subject matter of this Petition. Neb. Rev. Stat. §77-1504.01 (Cum. Supp. 2006).

2. The Board has failed to provide the evidence necessary for the Commission to issue an Order Adjusting values as requested.

**VI.  
ORDER**

**IT IS ORDERED THAT:**

1. The Petition of Kearney County, Nebraska, to reduce the assessed value of leasehold interests at Summerhaven Lake is denied.
2. A copy of this Order shall be served upon the Kearney County Assessor, the Kearney County Clerk, the Chairperson of the Kearney County Board of Equalization, and the Kearney County Attorney, by certified mail.

**Dated and sealed** August 2, 2007.

\_\_\_\_\_  
Nancy J. Salmon, Commissioner

\_\_\_\_\_  
William C. Warnes, Commissioner

**SEAL**

\_\_\_\_\_  
Wm. R. Wickersham, Commissioner