

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW
COMMISSION

JOSIAH H. PRICE)
)
 Appellant,)
)
 vs.)
)
)
)
 LANCASTER COUNTY BOARD OF)
 EQUALIZATION,)
)
 Appellee.)

CASE NO. 96R-195

FINDINGS AND ORDERS

Filed March 10, 1997

Appearances:

For the Appellant: Josiah H. Price
1411 W Jean Circle
Lincoln, NE 68522

For the Appellee: Diane Staab
Deputy County Attorney
Lancaster County
555 South 10th Street
Lincoln, NE 68508

Before: Commissioners Edwards and Reynolds

Edwards for the Commission:

SUMMARY OF DECISION

The Commission finds the Lancaster County Board of Equalization acted in an arbitrary or unreasonable manner in denying Taxpayer request for lower valuation due to physical condition. Commission reverses Lancaster County Board of Equalization decision and grants requested reduction in valuation.

NATURE OF THE CASE

Josiah H. Price ("Taxpayer") appealed his 1996 residential real valuation to the Lancaster County Board of Equalization ("County") in a timely and proper manner. He alleges that his residential property located at 1411 W Jean Cr in City of Lincoln, Lancaster County, NE has structural damage that is very difficult and costly to cure. He appeared before County at his hearing. County denied request for reduction in value. Taxpayer appealed from that action to the Tax Equalization and Review Commission in a proper and timely manner. On February 28, 1997 the Commission received a letter from Mr. Price requesting a correction in his requested valuation from \$55,500 to \$59,000. Mr. Price also stated in the letter that he had sent a copy of the letter to the County Assessor by Certified, Receipt Requested U.S. Mail.

DUTIES OF THE PARTIES

Taxpayer, if dissatisfied with the county assessor's determination of assessed value of Taxpayer's real property, must timely file a written protest with County. Neb. Rev. Stat. §77-1502 (Reissue 1996). Between June 1 and July 25 of each year, County reviews and decides those protests. County is required to fairly and impartially equalize the values of all items of nonagricultural real property in the county so that all such real property is assessed uniformly and proportionately, with no action taken before June 1 nor after July 25 of each year. Agricultural and horticultural land, as defined in section 77-1359, adjustments and corrections are statutorily specific. Neb. Rev. Stat. §77-1504 (Reissue 1996).

ANALYSIS

The Commission took Judicial Notice of Title 442 of the Nebraska Administrative Code (the Rules and Regulations of the Commission); the pleadings contained in the Case File 96R-0195; the *1996 Nebraska Assessor's Reference Manual Volumes 1 and 2*; the *Marshall & Swift Residential* cost handbook; The I.A.A.O. textbook, *Property Assessment Valuation*, Second Edition; the Property Tax Division's published 1996 ratios and measures of central tendency statistics for Lancaster County as required by Neb. Rev. Stat. §77-1327 (6)(Reissue 1996); and the 1996 Residential County Profile for Lancaster County. Taxpayer offered Exhibit #18 containing 62 photographs of his residential property. These showed a variety of maintenance problems and physical deterioration of the subject property. Some of

them were reasonably curable. Those of a more serious, structural nature are shown in 10 photos numbered 18-A, 18-B, 18-F, 18-I, 18-J, 18-K, 18-L, 18-N, 18-O, & 18-W. These show basement walls pulled away at corners, large cracks in walls, severe damage in support beams, cracked ceilings, broken support beams, shifting of stoop porch and cracks in concrete blocks. These photographs support Taxpayer's allegation that his property had structural damage. County offered Exhibits #1 thru #17 which contain copies of property record cards of subject and comparable properties, the transcript of County hearing, and credentials of Appraiser Lyman Taylor. Testimony from Lancaster County Assessor's Appraiser, Lyman Taylor, was that the County relied on Market data analysis and the subject property was treated the same as other properties in that neighborhood. In Exhibit #1 at page 44, the County's Referee, Mr. Joe Wilson, wrote that the interior of the property was in poor condition. Mr. Price testified that he offered the Referee an interior inspection of the subject property, but it was not accepted and the Referee only inspected the exterior of his home. The Referee also wrote that property similar to Mr. Price's in that neighborhood was selling from \$75,000 to \$85,000. Given the poor condition of subject (Mr. Price's) property, a value of \$63,900 seems reasonable.

Mass tax appraisal techniques are acceptable and proper methods of using the known factors of sold properties and applying those factors and their statistical analysis results to the mass of unsold properties to achieve a current market value that is uniform and proportionate. Neb. Rev. Stat. §77-112 (Reissue 1996). The balance in this system, for the individual taxpayer, is that he has the opportunity to come before the County with the particular specific factors that affect the value of his property. If he presents competent evidence that the County assessment is greater than market value or that the taxpayer's property is assessed at a level higher than his neighbors or than the county residential ratio overall, he has the right to receive a corrected equalized valuation. Neb. Rev. Stat. §77-1502 (Reissue 1996).

In reviewing the comparable "sold" properties (distinguished from the computer selected comparables) provided by the County, of the six presented, three sold for less than \$75,000 and three sold for more than \$75,000, however, none sold for \$80,000 or more. All photos of the comparable properties appeared to be in better physical condition than subject property. County provided comparables that were very similar in design, quality, size and location.

The dollar amount determined by the County Referee, also referred to by Mr. Wayne Kubert at page 26 of Exhibit #1 transcript, of \$12,000, that would be necessary to restore Taxpayer's residence to typical condition for a house of that age, quality and style, located in that neighborhood, was considered by the Commission.

Because the assessed value for 1996 is the basis for tax calculation and that is the year being addressed, the Commission, with the information before us, did use the assessed valuation of the sold comparables as the basis of comparison for subject property.

If the 1996 assessed values of the comparable properties are negatively adjusted by the \$12,000 (needed to repair subject property) to bring them to the same condition as the subject, they would calculate as follows:

Address	Sq.Ft.	1996 Assessment	Assmt less adj.	Adj Sq. Ft.
SUBJECT	1028	63,900	63,900	\$61.16
1808 SW 16th	1028	62,300	50,300	48.93
1615 SW15th	974	65,100	53,100	54.52
1500 W Jean Cir	1028	65,700	53,700	52.24
1409 SW16th	1028	70,800	58,800	57.20
1510 W Jean Cir	1028	68,900	56,900	55.35
1624 W Arlington	1028	66,900	54,900	53.40

From this review, Taxpayer's request of \$59,000 or \$57.39 per sq ft., would seem to be reasonable.

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) (Reissue 1996). The Commission may, however, evaluate the evidence presented utilizing it's experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016 (5) (Reissue 1996).

From the pleadings and the evidence the Commission finds and determines as follows:

- I. That Taxpayer owns real residential property located in City of Lincoln, Lancaster County, NE.
- II. That Taxpayer was dissatisfied with the value placed on the real property for 1996 because of structural damage and timely filed a protest with County.

- III. That County assigned a Referee to hear Taxpayer's case; such referee acknowledged that Taxpayer property was in poor condition. Referee also wrote that the value of \$63,900 accounted for the damage as comparable properties in the neighborhood were selling for \$75,000 to \$85,000.
- IV. That County held a hearing and denied Taxpayer request for a reduction in value due to structural damage.
- V. That County Appraiser testified that county puts most weight on the market sales comparison approach to value for residential property.
- VI. That the Lancaster County residential median ratio of 94% was within the 1996 acceptable residential ratio range of 92% to 100%, as set by the State Board of Equalization and Assessment.
- VII. That Taxpayer's real residential property suffers from extensive physical deterioration, some of which is structural in nature, making it more difficult and expensive to correct.
- VIII. That taxpayer sent a letter to the Tax Equalization and Review Commission and the County Assessor's Office requesting his figure of \$55,500 be corrected to a request of \$59,000.

JURISDICTION

The Tax Equalization and Review Commission has jurisdiction of this case pursuant to Neb. Rev. Stat. §77-1233.04(6) (Reissue 1996).

STANDARD OF REVIEW

ANALYSIS

The Tax Equalization and Review Commission is not a court. The Commission was created pursuant to state law to provide for an accessible and affordable system of review of valuation decisions. Under such circumstances, applying the standard devised by the Nebraska Supreme Court to the Commission would be presumptuous and ill-advised.

Therefore, the Commission must adopt a standard applicable to cases it hears and decides. This standard must be in keeping with the precept that tax laws are to be strictly construed, and construed in the light most favorable to the taxpayer. See, e.g., *Nebraska Annual Conference of the United Methodist Church v. Scotts Bluff County Board of Equalization*, 243 Neb. 412, 416, 499 N.W.2d. 543, 547 (1993), and *Sioux City and Pacific R.R. v. Washington County*, 3 Neb. 30, 32 (1873). In determining that standard, resort must be made to the language of the statute. The Nebraska Supreme Court has often held that statutory construction is a simple task. The Court has held "In construing a statute, it is presumed that the Legislature intended a sensible rather than an absurd result. . . Statutory language is to be given its plain and ordinary meaning. . . " *Metropolitan Utilities Dist. v. Twin Platte Natural Resources Dist.*, 250 Neb. 442, 451, 550 N.W.2d 907, 913 (1996).

Therefore, the standard is that set forth in the statute. The word "arbitrary" is defined in the Webster's New Collegiate Dictionary (1981) as "arising from will or caprice; selected at random or without reason;" and "unreasonable" is defined as "not governed by or acting according to reason, not conformable to reason; absurd; exceeding the bounds of reason or moderation." Under these definitions, the Commission must affirm the decision of a county board of equalization unless that decision was determined by will or caprice or selected at random; or if the board's decision was not governed by reason; was absurd; or exceeded the bounds of reason or moderation.

CONCLUSIONS OF LAW

Taxpayer provided competent evidence and testimony that his property is adversely affected in the market place because of needed difficult and costly structural repairs. Comparisons with similar properties in the neighborhood showed the comparables to be in much better condition, better curb appeal, and better repair. The assessed valuations, however, were very similar to the subject, showing a needed adjustment for the difference in condition for proper comparison to the subject. Neb. Rev. Stat. §77-1504 provides for equalizing value of real estate of individual taxpayer. *Fromkin v. State*, 158 Neb. 377, 63 N.W.2d 332. The Commission must, therefore, and hereby does conclude as a matter of law that the Lancaster County Board of Equalization was arbitrary and unreasonable in denying Taxpayer's request to lower valuation due to serious structural damages.

ORDER

IT IS, THEREFORE, ORDERED as follows:

- I. That the 1996 decision of the Lancaster County Board of Equalization is reversed.

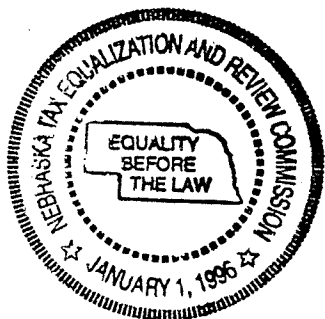
- II. That the assessed valuation for 1996 for Taxpayer's real residential property shall be:
 - a. Land: \$14,000
 - b. Buildings: \$45,000
 - Total: \$59,000

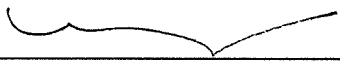
- III. That this decision, if no appeal is filed, shall be certified within thirty days to the Lancaster County Treasurer, and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).

- IV. That each party is to bear its own costs in this matter

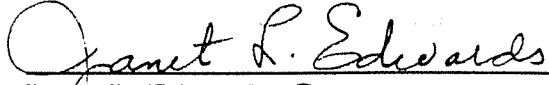
IT IS SO ORDERED.

Dated this 10th day of March, 1997.





Mark P. Reynolds, Chairman



Janet L. Edwards, Commissioner

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