

BEFORE THE NEBRASKA TAX EQUALIZATION  
AND REVIEW COMMISSION

PAUL K. CLARK,

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Case No. 96R-118

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Appellant(s),

)

)

vs.

)

FINDINGS AND ORDERS

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DOUGLAS COUNTY BOARD OF  
EQUALIZATION,

)

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)

Appellee.

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Filed July 23rd 1997

Appearances:

For the Appellant:

Paul K. Clark  
3136 S 105 Ave.  
Omaha, NE 68124

For the Appellee:

Jeanne A. Burke, Esq.  
Deputy Douglas County Attorney  
909 Civic Center  
Omaha, NE 68183

Before: Commissioners Edwards, Hans and Reynolds

Hans, Commissioner, for the Commission:

SUMMARY OF DECISION

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

## NATURE OF THE CASE

Paul K. Clark ("Taxpayer") owns certain residential real property located in the City of Omaha, Douglas County, Nebraska. Taxpayer filed a protest with the Douglas County Board of Equalization ("County") alleging that the valuation on his house was excessive and not comparable to homes in the area. By way of relief, Taxpayers requested that the proposed 1996 valuation of \$104,000 be reduced to \$77,100. 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 (Reissue 1996).

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 (Reissue 1996).

"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 (Reissue 1996).

## ANALYSIS

The Commission took judicial notice of certain publications and materials as follows: the Case File 96R-118; *Marshall Swift Residential Cost Handbook*, *Cole Layer & Trumble Cost Manual*; *Nebraska Assessor's Reference Manuals, Volumes 1 and 2*; the I.A.A.O. textbook, *Property Assessment Valuation, Second Edition*; The Property Tax Division of the Department of Revenue Published 1996 Ratios and Measures of Central Tendency as required by Neb. Rev. Stat. §77-1327 (6); the 1996 Residential Douglas County Profile; Title 442 (Tax Equalization and Review Commission's Rules and Regulations; LB397; and the Uniform Standards of Professional Appraisal Practices (USPAP). Appellant offered Exhibits 1 and 12, and Appellee offered Exhibits 2 through 11 and 13. All were received without objection.

Taxpayer alleges that the increase in his home valuation is excessive and is not comparable to other homes in the area. He states in Exhibit 1 that he is trying to determine if the re-evaluation was reasonable and proper, what the basis for the re-evaluation was and if he is paying his fair share of the tax burden or not. Exhibit 1 lists properties in his area that are comparable in size. He lists the lot and house values and a total value stating that the figures come from the County Assessor's and County Clerk's records. The listed valuations range from \$58,900 to \$106,000. The ability to compare more than just base square foot and number of bedrooms is not possible as no other information was given as to year built, quality, condition, or

pertinent attributes such as number of bathrooms, fireplaces, decks, patios, etc.

County's Exhibit 9 lists subject property and ten comparables all located on South 105th Ave. They range in *assessed* value from \$93,000 to \$110,000 and in value per square foot from \$70.50 to \$80.66 with the average at \$75.35. Subject property is valued at \$104,000 and \$75.58 per square foot, which is the median per square foot assessed value. County's Exhibit 6 is the property record information for the subject property and Exhibits 7 and 8 are the four comparable properties that *have sold* within the two year time period allowed. They are listed below:

	Yr Blt	Sq Ft	CDU	COND	Sales Price	Pr Sq Ft	Assessed
Subject	1958	1376	Good	Good	-----	-----	\$75.58 sq ft
Comp 1	1957	1406	Avg	Avg	\$112,000	\$79.66	\$76.81 sq ft
Comp 2	1957	1376	Good	Good	\$119,700	\$86.99	\$79.94 sq ft
Comp 3	1957	1154	Good	Good	\$ 98,500	\$85.35	\$73.66 sq ft
Comp 4	1956	1296	Avg	Avg	\$125,500	\$96.45	\$82.33 sq ft

From the two Exhibits described above, the evidence supports the County's contention that the subject property is equitably valued with the properties in the area that have sold as well as with the comparable properties using assessed values as the measure of comparison. The evidence also indicates that the subject property is not valued at a value in excess of market value.

County's testimony is that the sales of comparable residential properties are

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:

1. That Taxpayer is the owner of record of residential real property legally described as Lot 2, Block 11 Rockbrook Heights, Omaha, Douglas County, Nebraska.
2. That Taxpayer was dissatisfied with the valuation the County Assessor placed on his residential property and timely filed a protest with County.
3. That County denied Taxpayer's request for a reduction in valuation.
4. That Taxpayer from that decision properly filed an appeal with the Tax Equalization and Review Commission.
5. That evidence was adduced by County showing the subject property is valued comparably with like residential property in the Rockbrook Heights neighborhood.
6. That the basis used by County to value all residential property in the subject property's neighborhood was the sales of comparable residential properties located in the Rockbrook Heights neighborhood using the market comparison and cost approaches to value as shown in Exhibits 6, 7, and 8.

7. That no evidence was adduced to show that the Douglas County Board of Equalization was arbitrary or unreasonable in denying Taxpayer's request for a reduction in the value of the subject property.

## JURISDICTION

Jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (Reissue 1996), as amended by L.B. 397 (1997 Session).

## 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).

An administrative decision is "arbitrary" when it is made in disregard of the facts or circumstances and without some basis which would lead a reasonable person to the same conclusion. *Ponderosa Ridge LLC v. Banner County*, 250 Neb. 944, 554 N.W. 2d 151 (1996); *Central Platte NRD v. City of Fremont*, 250 Neb. 252, 549 N.W. 2d 112 (1996).

#### CONCLUSIONS OF LAW

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 the action of the Douglas County Board of Equalization should be affirmed.

ORDER

IT IS THEREFORE ORDERED as follows:

1. That the decision of the Douglas County Board of Equalization which denied Taxpayers' protest is affirmed.
2. That Taxpayers' residential real property known as Lot 2, Block 11 Rockbrook Heights, Omaha, Douglas County, Nebraska, more commonly known as 3136 S 105th Ave, shall be valued as follows for tax year 1996:

Land	\$ 14,600
Improvements	\$ 89,400
Total	\$104,000

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

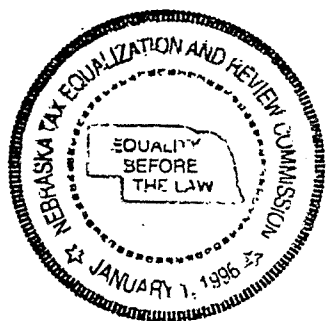
IT IS SO ORDERED.

Dated this 23rd day of July, 1997.

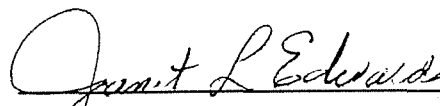


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Mark P. Reynolds, Chairman



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Janet L. Edwards, Commissioner



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Robert L. Hans, Commissioner