

BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION

LARRY L. DAUGHERTY,

Appellant,

vs.

LINCOLN COUNTY BOARD OF
EQUALIZATION,

Appellee.

CASE NO. 97R-3

FINDINGS AND ORDERS

Filed April 7, 1999

Appearances:

For the Appellant:

Jess C. Nielsen, Esq.
410 North Ash Street
P.O. Box 1006
North Platte, NE 69103

For the Appellee:

Joe W. Wright
Lincoln Deputy County Attorney
301 North Jeffers, Room 101A
North Platte, NE 69101

Before: Commissioners Edwards, Hans and Reynolds

Edwards, Commissioner, for the Commission:

SUMMARY OF DECISION

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

NATURE OF THE CASE

Larry L. Daugherty ("Taxpayer") owns certain residential real property located in the City of North Platte, Lincoln County, Nebraska. Taxpayer filed a protest with the Lincoln County Board of Equalization ("County") alleging that "there have been no improvements to this property in the last eight years" and the property was therefor overvalued. By way of relief, Taxpayer requested that the proposed 1997 valuation of \$40,670 be reduced to \$36,095. County granted the protest in part, reducing the valuation to \$39,220 , from which decision Taxpayer appeals.

EVIDENCE BEFORE THE COMMISSION

Judicial notice was taken, without objection, of the pleadings in Case File 97R-3, the *Marshall Swift Residential Cost Handbook*; the *1997 Nebraska Assessor's Reference Manuals*, Volumes 1 and 2; the Nebraska Constitution; the Nebraska State Statutes; *Title 442, Nebraska Administrative Code* (the Tax Equalization and Review Commission's Rules and Regulations); three standard reference works published by the International Association of Assessing Officers: *Property Assessment Valuation, Second Edition* (1996); *Property Appraisal and Assessment Administration* (1990); and *Glossary for Property Appraisal and Assessment* (1997); the Property Tax Division of the Department of Revenue's 1997 Ratios and Measures of Central Tendency which are published pursuant to Neb. Rev. Stat. §77-1327(6); the 1997 County Profiles for Lincoln County; the 1997 Equalization Proceedings of the Tax Equalization and Review Commission; the *Uniform Standards of Professional 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. The Commission also received certain exhibits and testimony during the course of the hearing. The parties stipulated to certain facts.

ISSUES BEFORE THE COMMISSION

Neb. Rev. Stat. §77-1502 (Reissue 1996) requires a taxpayer to identify the issues to be presented to the County Board of Equalization. The Commission's jurisdiction is limited to those issues presented to the County Board of Equalization. Neb. Rev. Stat. §77-1511 (Reissue 1996). The issues before the Commission are, therefore:

1. If the valuation of the subject property as determined by the County to be the fair market value of the subject property as of January 1, 1997 was unreasonable and arbitrary.
2. The land value is not at issue.

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 its experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016 (5) (Reissue 1996).

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

A.
PROCEDURAL FINDINGS

1. That Taxpayer is the owner of record of residential real property as legally described in the petition. ("subject property"). (E1).
2. That the Lincoln County Assessor ("Assessor") proposed valuing the subject property for purposes of taxation in the amount of \$40,670 as of January 1, 1997 ("assessment date").
3. That Taxpayer timely filed a protest of the proposed valuation, and requested that the subject property be valued at \$36,095. (E1).
4. That the basis of the protest was the allegation that the property was overvalued and no improvements have been made to this property in the last eight years.
5. That the County granted the protest in part, reducing the valuation to \$39,220.
6. That thereafter, the Taxpayer timely filed an appeal of the County's decision to the Commission. (Appeal Form).

B.
SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. That the parties stipulated to seven separate facts concerning the subject property and the comparable properties.
2. That the first stipulation is: "The house located at 806 North Sherman is in poorer condition and location when compared to the Appellant's property. Further, it has no basement, but the subject does have a basement. Furthermore, the comparable property has a 20 X 42 detached garage and therefore be hard to classified as a four car garage." (E8).

3. That the second stipulation is: "The house located at 916 West 11th is only 600 square feet in size and has no basement. Further, said comparable has a 16 X 20 detached garage which was built in 1946." (E8).
4. That the third stipulation is: "Both of these comparables are approximately two miles west of Appellants house." (E8).
5. That the fourth stipulation is: "Appellee's comparable is located at 909 East 8th. Said comparable (house) has 784 square foot plus a 720 square foot finished basement. Further, said comparable has a detached garage which is 16 x 34 which was built in 1948. Furthermore, the lot of this comparable is approximable the same size as the appellant's lot. The sale on this comparable was \$45,000.00 and the sale done in June of 1997." (E8).
6. The fifth stipulation is: "On cross-examination Francis Fleecs would say that he did not interview the buyer or sellers of the aforementioned comparables. Further, Francis Fleecs would state that he would not know what personal property went with sale of the comparables, other than the Fixtures. Except such as Form 521 would disclose the value of the personal property transferred in the comparable sales." (E8).
7. The sixth stipulation is: "That Larry L. Daugherty, appellant, would testify to the following: That there is water in his basement the majority of the time." (E8).
8. The seventh stipulation is: "That Larry L. Daugherty, Appellant, would testify to the following: That the facts stated in the Appellants, protest pleadings are true." (E8).
9. That the subject property's land component value of \$3,110 is not at issue. (E1).
10. That both parties stipulated to the fact that there is water in the basement of the subject

property the majority of the time, however, the property record card shows 680 square feet of minimal finish basement with a Replacement Cost New (RCN) of \$1,945. (E5)

11. That with water in the basement a majority of the time, the minimal finish would suffer significant, if not total, damage. (E5)
12. That the County used the cost approach appraisal method of calculating the fair market value of the subject property as of assessment date January 1, 1997. (E5).
13. That Taxpayer contends the subject property has only a window air conditioner which would add no value to the RCN computation, however, the subject property record card properly lists no central air conditioning and no valuation for that component. (E5)
14. That Taxpayer contends the subject property has asphalt roof shingles, however the subject property record card properly lists composition shingles which are the equivalent value of asphalt shingles when calculating the RCN of the subject property resulting in the same value for the roof shingles component of the subject property valuation. (E5).
15. That Taxpayer contends the subject property has carpet mostly older than 1980, however, the subject property record card properly lists floor cover at the standard Marshall and Swift price for a fair quality house of \$1.38 per square foot before depreciation. (E5).
16. That from the record, the Commission determines that the County used professionally accepted mass appraisal methods in determining the fair market value of the subject property as of assessment date, January 1, 1997.
17. That from the record before the Commission, the County was unreasonable and arbitrary in not removing the minimal basement finish when the subject property "has water in the basement the majority of the time". (E8).

18. That with the minimal basement finish of \$1,945 (RCN) removed from the cost method calculations, the subject property's fair market house value is reduced to \$25,563, a depreciated reduction of \$1,071.
19. That the Commission, from the record, determines the fair market value of the subject property as of assessment date of January 1, 1997, to be \$38,149.

ANALYSIS

The subject property is located in North Platte, Nebraska. It is an older home, built in 1930. It has 998 square feet of living area. The County listed it as a fair quality house in average condition. A new garage was added in 1989. The County's comparable, Exhibit 6, shows 31% depreciation while the subject property, Exhibit 5, shows 45% depreciation, recognizing differences in age and condition.

"We recognize that recent and comparable sales of real estate may be admissible as evidence. . . for two different purposes. They may be admitted as substantive proof of value of the condemned property or as foundation and background for an expert's opinion of value. [Citation omitted.] The rule on comparability is not as strict for foundational purposes as it is when the comparable is used as direct and independent proof of value. However, there still must be a certain degree of similarity for both purposes . . ." 584 N.W.2d 837, 7 Neb. App. 688, *DeBruce Grain, Inc. v. Otoe County Bd. Of Equalization*, (Neb. App. 1998) Excerpt from page 584 N.W. 2d 843.

With the stipulations in place concerning the comparable properties there is no need to go into any discussion of their comparability or lack of comparability to the subject property.

"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)

“An owner who is familiar with his property and knows its worth is permitted to testify as to its value.” *U.S. Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16 (1999).

The parties stipulated to the fact that the subject property basement has water the majority of the time. If there is water in a basement for a long period of time the “minimal finish” would suffer substantial damage and it would be constantly recurring. The subject property record card lists 680 square feet of minimal finish with an RCN of \$1,945. With the stipulation in place, by the parties, it would appear to be reasonable that the minimal finish should be removed. If the minimal finish is removed from the calculation, the resulting house value is reduced by \$1,071 to \$25,563. The garage value is unchanged at \$9,476 and the land value is \$3,110 for a total valuation for the subject property of \$38,149.

From the record before the Commission, the minimal basement finish must be removed due to the fact that there is water in the basement a “majority” of the time. Therefore, the fair market value of the subject property for tax year 1997 is \$38,149.

JURISDICTION

Jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (1998 Cum. Supp.).

STANDARD OF REVIEW

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. Neb. Rev. Stat. §77-1511 (Reissue 1996). The Nebraska Court of

Appeals, in interpreting this statute, has held 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).

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 Taxpayer has met his burden of proof as required by *Kawasaki, supra*. The Commission must therefore conclude that the decision of the Lincoln County Board of Equalization should be reversed.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That the decision of the Lincoln County Board of Equalization which granted, in part, Taxpayers' protest is reversed.

2. That Taxpayer's residential real property known as Nevilles Sub. N. 139 ft 4 in. of S. 172 FT 4 IN. of E. 93FT 77, .30 acres, North Platte, Lincoln County, Nebraska shall be valued as follows for tax year 1997:

| | |
|--------------|----------|
| Land | \$ 3,110 |
| Improvements | \$35,039 |
| Total | \$38,149 |

- 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 1997.
- 5. That each party is to bear its own costs in this matter.

IT IS SO ORDERED.

Dated this 7th day of April, 1999.



[Signature]

 Mark P. Reynolds, Chairman

[Signature]

 Janet L. Edwards, Commissioner

[Signature]

 Robert L. Hans, Commissioner