

BEFORE THE NEBRASKA TAX EQUALIZATION  
AND REVIEW COMMISSION

STEPHEN L. HOSMAN,	)	
	)	CASE NO. 96R-63
Appellant,	)	
	)	
v.	)	FINDINGS AND ORDERS
	)	
DOUGLAS COUNTY BOARD OF	)	
EQUALIZATION,	)	
	)	
Appellee.	)	

Filed May 22, 1997

Appearances:

For the Appellant: Stephen L. Hosman  
25545 Blondo Street  
Omaha, NE 68069

For the Appellee: Patrick R. Guinan  
Deputy Douglas County Attorney  
909 Civic Center  
Omaha, NE 68102

Before: Commissioners Edwards, Hans and Reynolds

Reynolds, Chairman, for the Commission:

SUMMARY OF DECISION

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

## NATURE OF THE CASE

Stephen L. Hosman ("Taxpayer") owns certain residential real property located in the City of Omaha, Douglas County, Nebraska. Taxpayers filed a protest with the Douglas County Board of Equalization ("County") alleging that his property was assessed at a value higher than the fair market value of the home. By way of relief, Taxpayer requested that the proposed 1996 valuation of \$296,000 be reduced to \$200,000. 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

Construction on Taxpayer's property was started in 1991, but was not completed until 1994. Taxpayer purchased the land, designed the structure, then had a company assemble the components for the structure according to Taxpayer's design. Unfortunately, Taxpayer's design failed to take into consideration several essential items such as heating and cooling ducts, which resulted in certain functional obsolescence including: a garage floor that is not level with the approach to the garage; a furnace which occupies space which was supposed to be one of the garages; exposed pipes; and closets which must be used for ducts; among other things. Taxpayer reportedly paid \$260,000 for the land, building, components and labor necessary to install necessary heating and cooling ducts, etc. (Letter from County Appraiser dated March 6, 1997).

The property was assessed for the purposes of taxation for tax year 1995 at \$175,000, which was a partial assessment, since the property was not completed as of January 1, 1995. That assessment included an assessment of the land in the amount of \$53,400. For tax year 1996, the property was fully assessed at \$296,000, which also included an assessment of the land at \$53,400. Taxpayer's protest did not contest the assessed value of the land. The only dispute is regarding the improvements which the County Assessor contended should be \$242,600. Taxpayer alleged in the protest that the assessed value of the improvements should be no more than \$146,600. In his appeal to the Commission, however, Taxpayer requested a total assessment of \$240,000. Taxpayer is therefore contending in the instant case that the value of the improvements should be no more than \$186,600.

After the hearing, the Commission, pursuant to Title 442 Nebraska Administrative Code, directed that the parties adduce additional information regarding the value of the property. Part of that directive included instructions to the appraiser for the County to inspect the property, since the Referee had recommended such an inspection, but the inspection had not been made. As a result of the information provided pursuant to that directive, the appraiser for the County contends that the assessed value of the land and improvements should be \$260,000. County is, therefore, now contending that the value of the improvements should be \$206,600.

The record shows that Taxpayer's home is a single story, split entry residence erected in 1994, which has a shake shingle roof, full basement, is in good condition, and has 2,102 square feet of improved living area above ground. The appraiser therefore is seeking a determination that the property should be valued at \$98.00 per square foot for improvements only. The appraiser also notes that the grade of the property should be reduced from A+0 to A-05, under the applicable provisions of the Cole, Layer, Trumble Valuation Manual used by the County.

The County at the hearing offered Exhibit Number 3, which is a list of properties which the County contends are "similar" to the subject property. The County contends that the assessed value of the subject property is appropriate, when considered in light of the assessments of these "similar" or "comparable" properties. "Similar properties" share "overall quality, architectural attractiveness, age, size (for example, square footage, stories, number of units, and number of bedrooms and baths), amenities (for example, special purpose rooms, garage, swimming pool, and parking), functional utility (for example, architecture and appearance, layout, and equipment) and physical condition (for example, physical deterioration, maintenance, and modernization, including remodeling and additions). *Property Assessment Valuation*, Second Edition, p. 98. This element of "similarity," often referred to as "comparability," is essential to professionally accepted appraisal practices. For example, the proper application of the "Sales Comparison Approach" requires that

evidence be adduced to establish that the properties are in fact "similar" (or more commonly "comparable properties" or "comparables"), since the approach is a tool used "to estimate value by comparing the subject property to similar properties that have recently sold." *Property Assessment Valuation*, Second Edition, p. 97. The principle of similarity/comparability is equally important when comparing assessed values.

Exhibit 3 lists fourteen properties which the County contends are comparable to the subject property. These properties may be arrayed as follows:

	<u>Address</u>	<u>Assessed Value</u> Land Only	<u>Sq. Ft. Improvement</u> (Above ground lvg area)	<u>\$/Sq. Ft.</u>
1	25525 Blondo	\$296,300	2679	\$110.60
2	25807 Blondo	\$389,800	4734	\$ 82.34
3	25555 Blondo	\$231,400	2403	\$ 96.29
4	25535 Blondo	\$289,300	2776	\$104.21
5	25515 Blondo	\$319,100	3625	\$ 88.02
6	25505 Blondo	\$216,900	2529	\$ 85.76
7	25620 Dodge	\$219,200	2511	\$ 87.29
8	25630 Dodge	\$234,800	1448	\$162.15
9	25909 Blondo	\$172,900	1823	\$ 94.84
10	25847 Blondo	\$152,600	2060	\$ 74.08
11	25827 Blondo	\$158,000	2418	\$ 65.34
12	25817 Blondo	\$258,600	2896	\$ 89.29
13	1649 N. 164 <sup>th</sup>	\$233,800	1738	\$134.52
14	27320 W Center	\$333,000	1470	\$226.53

Although the County contends that these properties are all comparable to the subject property, such is not the case. Five of the properties, items 8, 10, 11, 12, and 13 are not split entries. Items 2 and 5 are substantially different in size from the subject. Item 14 isn't even on Chris Lake, as is the subject property. All of the items are at least two Quality Grades better than the subject property. Furthermore, the Commission received into evidence pictures of most of these properties, as well as copies of the property record cards maintained by the County Assessor's Office. The information contained in those exhibits emphasizes the fact that these properties are not true comparables to the subject property, since items 1, 3, 6, and 7 are substantially different from that of the subject property. None of the alleged "comparables" are "kit homes" as is the subject property, and none of the alleged comparables, from the record, have any functional obsolescence. Finally, the record is devoid of any explanation of the adjustments necessary to reconcile those values to

that of the subject property. In summary, the evidence does not support the proposed assessed value of \$98 per square foot for the improvements.

The evidence does show that tax year 1996 was the first year that the property was fully assessed. The cost of the land and improvements was \$260,00. The evidence shows that the indicated level of value for the residential class of property in Douglas County is 92%. (Notice of Valuation Change). Given the absence of any other information, the Commission must conclude that the property should be assessed at 92% of \$260,000, or \$239,200.

### 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:

1. That the Taxpayer owns certain residential real property described as Parcel 3, in the West ½ of the NE ¼, Section 17, Township 15, Range 10 East of the 6<sup>th</sup> P.M., in Douglas County, Nebraska, more commonly known as 25545 Blondo, Omaha, Nebraska 68114.
2. That Taxpayer filed a protest challenging the assessed valuation of \$296,000.
3. That there is no dispute as to the assessed valuation for tax purposes of \$53,400 for the land.
4. That the County admitted that the property was overvalued by recommending a total assessed value of \$260,000, when the original total assessed value was \$296,000.
5. That the recommended value of \$206,600, or \$98.29 per square foot for improvements is not supported by the evidence.

6. That there is certain functional obsolescence present in the structure.
7. That the decision of the Douglas County Board of Equalization was unreasonable and arbitrary in denying Taxpayers protest.

## 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).

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

The Commission must and hereby does conclude as a matter of law that the action of the Douglas County Board of Equalization in denying Taxpayer's protest was arbitrary and unreasonable and must be reversed.

### ORDER

IT IS THEREFORE ORDERED as follows:

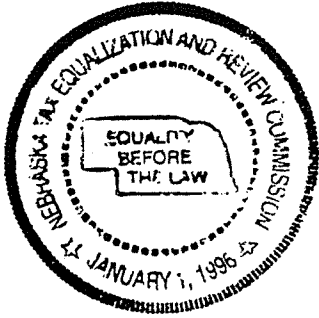
1. That the decision of the Douglas County Board of Equalization which denied Taxpayers' protest is reversed.
2. That Taxpayers' residential real property legally described as Parcel 3, in the West 1/2 of the NE 1/4, Section 17, Township 15, Range 10 East of the 6<sup>th</sup> P.M., in Douglas County, Nebraska, more commonly known as 25545 Blondo, Omaha, Nebraska 68114, shall be valued as follows for tax year 1996:

Land	\$ 53,400
Improvements	\$185,500
Total	\$239,200

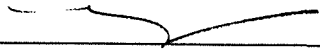
3. That this decision, if no appeal is filed, shall be certified within thirty days to the Douglas County Treasurer, and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
4. That each party is to bear its own costs in this matter

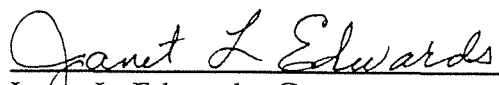
IT IS SO ORDERED.

Dated this 22<sup>nd</sup> day of May, 1997.



*Seal*

  
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Mark P. Reynolds, Chairman

  
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Janet L. Edwards, Commissioner

  
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Robert L. Hans, Commissioner