

BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION

JOSEPH AND ARDITH J. ABBOUD,)

Appellants,)

vs.)

DOUGLAS COUNTY BOARD OF)
EQUALIZATION,)

Appellee.)

Case No. 96R-0062

FINDINGS AND ORDERS

Filed June 12, 1997

Appearances:

For the Appellant: Mary Buford, Esq.
9910 North 48th Street, Suite 106
Omaha, NE 68152

For the Appellee: Jeanne Burke, Esq.
Deputy Douglas County Attorney
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Omaha, NE 68183-0001

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 of the subject property.

NATURE OF THE CASE

Joseph and Ardith J. Abboud ("Taxpayers") own 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"), protesting the proposed valuation of \$175,000. County reduced the valuation to \$166,000 for tax year 1996, from which decision Taxpayers' appeal.

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).

ANALYSIS

Taxpayers' appeal from County's decision, alleging that

" . . . the assessors want to increase our home valuation to \$166,000. We feel that because of the size of our home (2,134 sq. ft.), this is far in excess of its true value . . . Also our property is just as it was at purchase in 1970. It has the same out-moded kitchen and inexpensive light fixtures. It is a frame house with not steel or vinyl siding. The driveway is full of cracks and needs replacing. All the gutters leak and need replacing. It would be utterly impossible to sell this house for \$166,000, considering its size and condition."

(Appeal Form, p. 1) Based on these allegations, the Taxpayers requested that the 1996 valuation of \$166,000 be reduced to \$120,000.

The Commission, at the conclusion of the hearing on the merits of Taxpayers' case, directed that an inspection be made of Taxpayers' residential property. On March 20, 1997, the County Assessor's Office advised the Commission and the Taxpayers' that there were errors in the recorded dimensions of the subject property, and that the correct dimensions of the size of the improvements is 1,835 square feet.

As a result of the corrected information, the County Assessors Office proposes that the Commission adopt an order setting the assessed valuation for the subject property at \$149,000 for tax year 1996.

Taxpayers' testified that they had purchased the house in 1970, and that they hadn't done any extensive remodeling. Taxpayers also testified that, in their estimation, the house has a fair market value of approximately \$125,000. The issue now before the Commission is whether the assessed value of the subject property should be \$149,000 or \$125,000.

The subject property is a split level home of, now, 1,835 finished square feet. The home, according to the property record card, was built in 1961. According to the Taxpayers', the house has considerable deferred maintenance. The cost of performing that necessary maintenance is approximately \$10,000. This testimony is consistent with County's exhibit number 18, in which the County's appraiser notes that the condition of the property should be lowered from "good" to "average." The exhibit also notes that the home, located in the Indian Hills Village subdivision, is in a desirable area within the City of Omaha.

Using the "new" proposed valuation, the proposed assessed value per square foot of the land and improvement is \$81.20 ($\$149,000/1,835$ finished square feet). Taxpayers' contend that, at most, the assessed value for the land and improvement should be \$68.12 ($\$125,000/1,835$ finished square feet). The Commission must therefore determine which valuation is correct.

County offered, among other exhibits, Exhibit 24. However, from the record before it, the Commission cannot determine if the information contained in the exhibit is correct or credible. This is directly attributable to the fact that County failed to offer copies of the property record cards which might support Exhibit 24. County also offered Exhibit 26, which purports to show sales of split level homes in the Indian Hills Village between 1985 and 1994. Again, however, the County failed to offer copies of the property record cards which might support the Exhibit. Furthermore, the Exhibit itself states "Sales not adjusted for time, conditions, etc."

The failure of the County to offer these property record cards is significant. The property record cards show the age of the improvements, size of the lot, condition, quality, style, etc. The assessed value, under professionally accepted mass appraisal techniques, must be based on, among other factors, age, style, condition, quality, and size of lots. "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.

The problems caused by the inadequate record are compounded by the fact that the "comparables" offered by the Taxpayers are equally deficient. The properties offered by the Taxpayers are not from Indian Hills Village. Adjustments necessary for the critical factor of location cannot therefore be determined. (*See, e.g., Property Assessment Valuation, 2nd Ed., p. 76* "No two parcels of land are exactly alike. They might be identical in size and physical characteristics, but each parcel has a unique location and is likely to differ from other parcels in some way. Typical differences requiring adjustments are in time of sale, location and physical characteristics.")

In light of the lack of adequate and credible evidence offered by the Parties, the Commission must determine the assessed value of the subject property from the record before it. Exhibit 25 purports to show the "1996 Assessment Values Split Level Homes Less than 2500 Sq. Ft. Indian Hills Village." From the exhibit, it cannot be determined whether the age, quality and condition of the compared properties meet the requirements of professionally accepted mass appraisal techniques. The exhibit does not even indicate whether "improvements" consist of above-grade finished living area, which is the usual definition applied in professionally accepted mass appraisal techniques, or whether the term includes, for example, the garage. The Commission, from this record, can only conclude that the term "improvements" on the exhibit means the size of the above-grade finished living area. This Exhibit, therefore, when the "Cost/PSFT" is arrayed from highest to lowest, establishes that the median cost per square foot of both land and improvements is \$73.50. That value, when applied to the subject property, supports a value for purposes of taxation of \$134,872.50. Of this amount, \$19,000 must be attributed to land. The value of the improvements, therefore, for the purposes of taxation for tax year 1996, is \$115,872.50.

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 the Commission finds and determines as follows:

1. Taxpayers owns certain residential real property legally described as Lot 25, Indian Hills Village, City of Omaha, Douglas County, Nebraska, more

commonly known as 200 South 85th Street, Omaha, NE 68114.

2. Taxpayers timely protested the issues of proposed valuation and equalization of the subject property for tax year 1996.
3. County denied the protest.
4. The record does not support County's action in denying the protest.
5. Taxpayers' did timely file an appeal of County's action to the Tax Equalization and Review Commission.
6. The evidence establishes that the value of the land and improvements of the subject property is \$73.50 per square foot.
7. The evidence shows that the dimensions of the improvements to the subject property as shown on the property record card are in error. The true and correct dimensions of the improvements, as reported by the county appraiser at the request of the Commission on March 20, 1997, are as follows:

House	1,835 sq. ft.
Garage	761 sq. ft.
8. The evidence supports a value of \$19,000 for the land.
9. The evidence supports a value of \$115,872.50 for the improvements.
10. County's action in denying the protest was both arbitrary and unreasonable.

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 actions of the County in denying Taxpayers' protest was both arbitrary and unreasonable.

ORDER

IT IS, THEREFORE, ORDERED as follows:

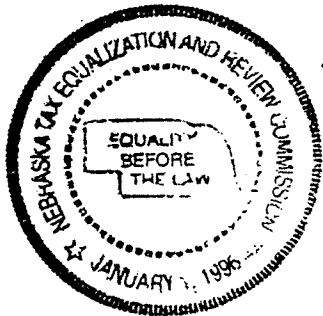
1. That the decision of the Douglas Board of Equalization which denied Taxpayers' protest is reversed.
2. That Taxpayers' residential real property known as Lot 25, Indian Hills Village, Omaha, Douglas County, Nebraska, more commonly known as 200 South 85th Street, Omaha, NE 68114, shall be valued as follows for tax year 1996:

Land	\$ 19,000
Improvements	\$ 115,872
Total	\$ 134,872

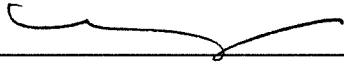
3. That this decision, if no appeal is filed, shall be certified within thirty days to the Douglas County Treasurer, and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
4. That each party is to bear its own costs in this matter

IT IS SO ORDERED.

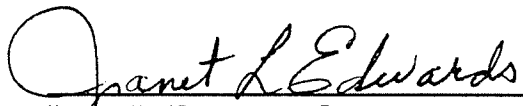
Dated this 11th day of June, 1997.



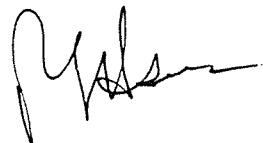
Seal



 Mark P. Reynolds, Chairman



 Janet L. Edwards, Commissioner



 Robert L. Hans, Commissioner