

BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION

SATCOMS LIMITED L. C.)
)
Appellant,)
)
vs.)
)
LANCASTER COUNTY BOARD OF)
EQUALIZATION,)
)
Appellee.)
)

CASE NO. 97R-348

FINDINGS AND ORDERS

Filed October 26, 1998

Appearances:

For the Appellant: Mr. Dennis J. Makielski
700 Old Line Centre, Suite 300
Waldorf, MD 20602

For the Appellee: Michael E. Thew, Esq.
Chief Deputy Lancaster County Attorney, Civil Division
County-City Building
555 South 10th Street
Lincoln, NE 68508

Before: Commissioners Edwards, Hans and Reynolds

Reynolds, Chairman, for the Commission:

SUMMARY OF DECISION

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

NATURE OF THE CASE

Satcoms Limited Liability Company ("Taxpayer") owns certain multi-family real property located in the City of Lincoln, Lancaster County, Nebraska. The Lancaster County Assessor ("Assessor") determined the actual or fair market value of the subject property to be \$1,308,100, as of January 1, 1997 ("assessment date). Taxpayer filed a protest with the Lancaster County Board of Equalization ("County") alleging that the Assessor, by failing to use actual income and operating expenses, and through the use of an improper capitalization rate, overvalued the subject property. By way of relief, Taxpayer requested that the proposed 1997 valuation of \$1,308,100 be reduced to \$1,074,200. County granted the protest in part, and reduced the total assessed value of the subject property to \$1,126,100 from which decision Taxpayer appeals.

EVIDENCE BEFORE THE COMMISSION

The Commission, under the provisions of Neb. Rev. Stat. §77-5016(5) (Reissue 1996), took notice of the following information: the pleadings and evidence in the case files 97R-346, 97R-347, 97R-348, 97R-349, 97R-350, and 97-R351; the *Marshall Valuation Service*; the *Nebraska Assessor's Reference Manuals*, Volumes 1 and 2; the *Nebraska Constitution*; the *Nebraska State Statutes*; three standard reference works published by the International Association of Assessing Officers: *Property Assessment Valuation, Second Edition*, published in 1996, *Property Appraisal and Assessment Administration*, published in 1990, and *Glossary for Property Appraisal and Assessment*, published in 1997; the Property Tax Division of the Department of Revenue's published 1997 ratios and measures of central tendency which are

published pursuant to Neb. Rev. Stat. §77-1327(6); the 1997 County Profiles for Lancaster County; the 1997 Equalization Proceedings of the Tax Equalization and Review Commission; the *Uniform Standards of Profession Appraisal Practices*, 1997 Edition; *Title 298, Nebraska Administrative Code* (the Nebraska Real Estate Appraiser Board's Rules and Regulations); the Nebraska Real Estate Appraiser Requirements; and the Nebraska Real Estate Appraiser Education Core Curriculum. The Commission also received certain exhibits and testimony during the course of the hearing.

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 Satcoms Limited Liability Company ("Taxpayer") is the owner of record of a 48-unit multi-family apartment complex known as Arapahoe Village located in the City of Lincoln, Lancaster County, Nebraska ("subject property"). (E5).

2. That the Lancaster County Assessor ("Assessor") proposed valuing the subject property at \$1,308,100 for the purposes of taxation as of January 1, 1997 ("the assessment date"). (E3, 43).
3. That the Taxpayer timely filed a protest of the assessed value of its property for tax year 1997, and requested that the proposed value be reduced to \$1,074,200. (E3, 43).
4. That Taxpayer in this appeal contends that the actual or fair market value of the subject property is \$1,094,238. (E2, 1).
5. That Taxpayer's basis for this appeal is the allegation that "Fair market value can only be determined by capitalizing a property's net operating income. A property's net operating income is only fairly determined by an analysis of the **actual income scheduled, then collected, minus the actual operating expenses, excluding real estate taxes.**" (Emphasis in original.) (E2, 3).
6. That the County granted the protest in part, and determined that the "actual" or "fair market" value of the subject property as of the assessment date to be \$1,126,100. (E3, 61).
7. That Taxpayer's protest was heard by a referee. (E3, 54-59).
8. That the Referee inspected the exterior of the subject property, and reviewed all information provided by both the County Assessor and Taxpayer. (E3, 58).
9. That the Referee recommended that the assessed value be set at \$1,126,100. (E3, 54).
10. That the County adopted the Referee's recommended value. (E3, 61).
11. That Taxpayer thereafter timely filed an appeal of that decision to the Nebraska Tax Equalization and Review Commission ("the Commission"). (Appeal Form).

B.
SUBSTANTIVE FINDINGS

1. That Taxpayer's contention that actual income and actual expenses must be used in order to determine actual or fair market value is contrary to professionally accepted mass appraisal practices.
2. That although Taxpayer offered evidence which purports to represent "actual" income and "actual expenses" for the subject property, Taxpayer offered no evidence of "typical" or market potential gross income, "typical" or market vacancy rates, "typical" or market expense ratios, or "typical" or market management fees for properties such as the subject property for tax year 1997 in Lancaster County, Nebraska.
3. That the Referee's Income Approach Worksheet has not been a part of the record in this appeal. That the Taxpayer's Spreadsheet entitled "Referee's Worksheet vs. Actual Income and Expenses 1996) establishes the following differences:
 - a. Taxpayer's "actual" income is less than 1% different than the "typical" or market income. (Taxpayer's income is shown as \$225,864. However $48 \text{ units} \times \$392/\text{month} \times 12 \text{ months} = \$225,792$. No explanation is given for this difference.)
 - b. The vacancy rate of 5% is used by both the Taxpayer and the Referee;
 - c. Taxpayer's "actual" expenses (assuming all those expenses are allowable under professionally accepted mass appraisal methods) differs by 2.43% from the "typical" or market expense ratios.

- d. Both the Referee and the Taxpayer, from this spreadsheet used identical "loaded" capitalization rates of 12.76%. (E2, 6).
- e. Referee's opinion of value is higher by 2.91% than Taxpayer's opinion of value.
- 4. That the Commission, from the record before it, concludes that County's determination of value under the Income Approach was made in accordance with professionally accepted mass appraisal methods.
- 5. That the Commission, therefore, from the record before it, finds that the "actual" or "fair market" value of the subject property as of the assessment date was \$1,126,100.
- 6. That the assessed value of the subject property for tax year 1997 as determined by the County is therefore supported by the evidence.
- 7. Further that no evidence has been adduced to establish that the decision of the County was unreasonable or arbitrary.

ANALYSIS

The threshold issue in any appeal to the Commission is summarized as follows:

"There is a presumption that a county 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 adduced on appeal to the contrary. From that point forward, 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.”

(Citations omitted). *Forney v. Box Butte County Board of Equalization*, 7 Neb. App. 417, 582 N. W. 2d 631 (1998).

Taxpayer alleges that the fair market value of the subject property is \$1,094,238 based on “actual income and actual expenses.” (E2, 5). Nebraska law provides that “actual value” is the “market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach, taking into account factors such as location, zoning, and current functional use, (2) income approach, and (3) cost approach.” Neb. Rev. Stat. Section 77-112 (1997 Supp.).

Although this statute does not define the term “mass appraisal methods,” the standard reference work *Property Assessment Valuation*, 2nd Ed. (“*Property Assessment*”), distinguishes valuations using mass appraisal methods from individualized “fee” appraisals. “Mass appraisal is the systematic appraisal of groups of properties as of a given date using standardized procedures and statistical testing. Single-property appraisal, or ‘fee’ appraisal, in contrast, is the valuation of a particular property as of a given date.” *Property Assessment*, at p. 285.

Professionally accepted mass appraisal methods hold that proper application of the Income Approach must be based on “the reasonable and typical expenses necessary to support and maintain the income producing capacity of the property.” *Property Assessment*, at p. 204. Expenses are further defined as those “*typical* expenses that are necessary to keep the property functional and rented competitively with other properties in the area.” *Property Assessment*, at

pp. 214-215. (Emphasis added.) It is also important to note that “(t)here are several items often found in an owner’s operating statement that are *not* proper expense charges in the income approach.” *Property Assessment*, at pp. 219.

These “professionally accepted mass appraisal practices” clearly contradict Taxpayer’s contention that actual income and expenses be utilized in determining the actual or fair market value of the subject property. Taxpayer has therefore failed to demonstrate that the County’s decision was unreasonable or arbitrary as required by Neb. Rev. Stat. §77-1511 (Reissue 1996).

Furthermore, Taxpayer’s own evidence fails to demonstrate that his property is overvalued. As shown above, Taxpayer’s opinion of value (assuming that all expenses included by Taxpayer are allowable under professionally accepted mass appraisal practices) differs from County’s by 2.91%.

Taxpayer has, however, failed to adduce evidence which would show that these “actual” expenses should properly be considered “typical” expenses under professionally accepted mass appraisal methods. In fact, nothing in the record supports a finding that the expenses presented by Taxpayer are even typical for the subject property. By contrast, the County used “typical” or market maintenance expenses in calculating their expense ratios. (E3, 53).

Given this record, the Commission must find and conclude that the Taxpayer failed to adduce evidence establishing that the decision of the County was unreasonable or arbitrary as required by Neb. Rev. Stat. §77-1511 (Reissue 1997).

JURISDICTION

Jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (1997 Supp.) as amended by 1998 Laws, L.B. 306.

STANDARD OF REVIEW

The Commission must affirm the decision of the county board of equalization unless the Taxpayer demonstrates by clear and convincing evidence that the decision made by the county board of equalization was not governed by reason, or was made in disregard of the facts or circumstances, or was made without some basis which would lead a reasonable person to the same conclusion. *J. C. Penney Co. v. Lancaster Cty. Bd. Of Equal.*, 6 Neb. App. 838, 578 N.W. 2d 465 (1998); *Title 442, Nebr. Admin. Code, Chap. 5, Sec. 018.*

CONCLUSIONS OF LAW

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 that, pursuant to the Standard of Review set forth above, the Appellant has failed to establish by a preponderance of the evidence that the decision of the Lancaster County Board of Equalization was unreasonable or arbitrary. Taxpayer contends that the County's decision was unreasonable or arbitrary in failing to use actual income and expense figures in determining value using the Income Approach. Taxpayer's contention is without merit, since professionally accepted mass appraisal practices hold that typical income and expense amounts must be utilized. The evidence shows that the County utilized professionally accepted mass appraisal practices in determining the

actual or fair market value of the subject property for tax year 1997. Accordingly, the action of the Lancaster County Board of Equalization must be affirmed.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

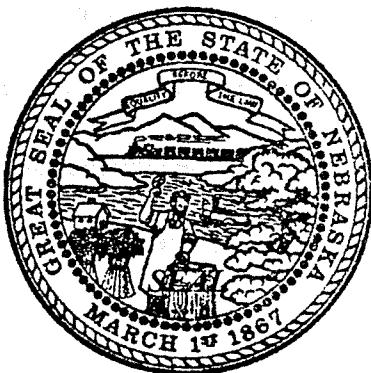
1. That the decision of the Lancaster County Board of Equalization which granted Taxpayers' protest in part is affirmed.
2. That Taxpayer's multi-family real property known as Southview Addition, Block 1, Lots 4, 5, 6, 7, 8, and 9, City of Lincoln, Lancaster County, Nebraska, more commonly known as Arapahoe Village, shall be valued as follows for tax year 1997:

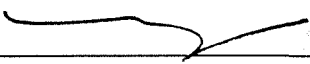
Land	\$ 192,000
Improvements	\$ 934,100
Total	\$1,126,100

3. 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).
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.

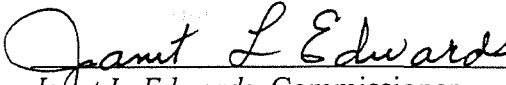
IT IS SO ORDERED.

Dated this 26th day of October, 1998.

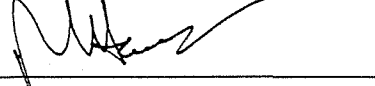




 Mark P. Reynolds, Chairman



 Janet L. Edwards, Commissioner



 Robert L. Hans, Commissioner