

SUMMARY OF DECISION

The Commission reverses the decision of the Pierce County Board of Equalization which granted, over the objection of the County Assessor, Taxpayer's protest request for a lower valuation of the subject property.

NATURE OF THE CASE

Robert and Barbara Petersen ("Taxpayers") own certain commercial real property located in the Village of Osmond, Pierce County, Nebraska. Taxpayers filed a protest with the Pierce County Board of Equalization ("County") alleging that their property was "not in line with other businesses in town or other grocery stores in the area". By way of relief, Taxpayers requested that the proposed 1997 valuation of \$176,000, as determined by the assessor, be reduced to \$105,525. County granted the protest in part, lowering the valuation to \$146,000, from which decision the Pierce County Assessor ("Assessor") 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).

EVIDENCE HEARD AND RECEIVED

The Commission took Judicial notice of certain information without objection from any of the three parties. (All items which the Commission took Judicial notice of were present in the hearing room and the parties were afforded the opportunity to examine all the documents.) That information included: the pleadings in the Case File; the *Marshall Commercial Valuation Service*; the *Nebraska Assessor's Reference Manual*, Volumes 1 and 2 (1997 Edition); Nebraska Constitution; Nebraska State Statutes; Title 442, Nebraska Administrative Code; I.A.A.O. reference text, *Property Assessment Valuation*, Second Edition(1996); I.A.A.O. reference text, *Property Appraisal and Assessment Administration* (1990); I.A.A.O. text, *Glossary for Property Appraisal and Assessment* (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 Commercial County Profile for Pierce County; 1997 Statewide Equalization Proceedings; Uniform Standards of Professional Appraisal Practices (1996 and 1997); Nebraska Real Estate Appraiser Board's Education Core Curriculum; Nebraska State Real Estate Appraiser Board Act Rules and Regulations; and the 1996 transcript from case 96R-31.

Forty-six exhibits were offered. Exhibits one and five through thirty-one were offered by the Appellant. Exhibits two, three, and thirty-two through forty-six were offered by the Appellee. Exhibit four was provided by the Commission. Exhibits ten through fifteen; exhibits seventeen, eighteen, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty-two, thirty-three, and forty-four were denied.

The Commission also heard the testimony of: the County Assessor; the Deputy County

Assessor; the Commercial Appraiser hired by the County; the Chairman of the County Board of Equalization; and the Taxpayer. Each party was allowed to cross-examine the witnesses of the other parties. Thereafter the Commission heard closing arguments, and took the matter under advisement.

ANALYSIS

The subject property consists of approximately 1.19 acres of land with a 12,500 square foot retail grocery store and florist shop located in Osmond, Nebraska. Osmond is a village of approximately 750 people in Pierce County, Nebraska. The store was built in 1989 by Taxpayers. It is a one story, Chief steel building with insulated walls and center span support. Exhibits Nineteen and Twenty show that the subject has a loading dock, covered entry way and a concrete parking pad. Testimony was given that no remodeling, or additions or change in use had taken place for the 1997 assessment year. The business is open seven days a week and employs twelve persons, most part-time. The Taxpayers have a total investment in the property since 1989 of \$246,734.29. Taxpayers received an electrical refund for going "all electric" (Exhibit 42 page 2), leaving a net cost of \$244,799.29.

The assessment history of the property as shown on Exhibit Twenty:

1993 original assessment	\$270,000
1993 final assessment	\$249,000
1994 assessment	\$249,000
1995 assessment	\$176,000
1996 original assessment	\$176,000
1996 final assessment	\$146,000
1997 original assessment	\$176,000
1997 final assessment	\$146,000

(It is noted for the record that no indication is given that the 1996 assessment that was ordered to

be set at \$176,000 by the Tax Equalization and Review Commission was implemented by County.)

Taxpayer offered Exhibit thirty-four containing four comparable sales from Pierce County showing the comparison of sale price to assessed value using square foot comparisons. Taxpayer did a great deal of research in gathering the information and presented it in an organized format. However, the "Sales Comparison" method of determining fair market value is a complicated process. Professionally accepted mass appraisal methods require that the initial properties chosen for comparison must be truly "comparable" properties. Those methods also require that adjustments be made to account for differences between the subject property and the "comparables". (Property Assessment Valuation, second edition, pages 105-112) No evidence was offered to show that the sales prices of the comparable properties had been adjusted for personal property, "good will" ("business value" or "blue sky"), location, financing or time of sale. Adjustments should also have been made to account for differences in age, size, quality, condition, amenities, and architectural attractiveness. (Property Assessment Valuation, second edition, page 98)

Taxpayer contends that the subject property is being treated in a different manner than other Pierce County commercial properties. Taxpayer's own evidence of ratios of properties that sold (with no adjustments) to the assessed value would show, however that this is not the case. Taxpayer's cost to build is well documented at \$244,000 which represents the investment in the property, in lieu of a sale. If the subject property was assessed at \$176,000, it would have a ratio of 72%; if assessed at \$146,000 it would have a ratio of 60%. Of all the properties attested to by Taxpayer, either in testimony or in various exhibits including the transcript, those ratios are right

in line with the Taxpayer's comparables and would not support Taxpayer's contention.

Taxpayer also offered Exhibit thirty-six which is an "Income Approach" method of valuation which is based on a "rent per square foot cost". The "comparables" used were Nash Finch lease amounts for five stores in towns with very different populations than Osmond, ranging from 1,000 to 200,000. The rental fees varied from \$1.50 to \$2.50 per square foot and the store sizes were all smaller than the subject property. No information is available as to age, quality of construction, or physical condition of the properties, all of which would affect the amount of lease fee or rent they would command. The subject property is in Osmond, population 750; is 12,500 square feet; is approximately eight years old; and is owner occupied. Taxpayer stated annual rental they determined was \$2000 per month or \$24,000 annual "rent". (Exhibit one, page 4) The annual rent of \$24,000 divided by the square foot of 12,500 equals ***\$1.92 per square foot***, which is right in the middle of the rents (\$1.50 to \$2.50 per square foot) listed by Nash Finch.

Proper implementation of the professionally accepted appraisal methods of valuation requires specialized education and training. The State of Nebraska requires licensing at several levels of expertise for persons preparing opinions of value. There are mandated hours of education and supervised practical experience for each specific license which is required prior to working in the appraisal field. All of these qualifications require time and considerable expense. Although Taxpayer worked diligently to present her "opinion of value" in the traditional three approaches to value, the results were fatally flawed in all three instances.

County Assessor presented the three approaches to value with supporting comparable properties and expert witness testimony. Exhibit eight shows the cost approach with a final

value of \$211,917. The Adjusted Replacement Cost New was \$309,588 which includes the loading dock, canopies and small steel building. The total depreciation factor was 33% at \$103,196 for a net value of \$206,392 (\$16.51 per sq. ft.) for the improvements. The land value is not in dispute at \$5,525 for a total value of **\$211,917 (\$16.95 per sq. ft.)** using the cost approach to value. (Note that Exhibit twenty, the subject property record card has a cost work sheet that shows cost approach to value at \$222,265.)

County Assessor Exhibit twenty-one is a list of comparable properties showing Section III with eight sales. Sale number eight is a 1990 sale and although it was in the same occupancy code, was not considered by the Commission. The subject property is a grocery store and has an Occupancy Code of 340. Three of the sales listed by Assessor are also grocery stores in Occupancy Code 340. Following is a comparison;

Sale #	Town location	Size sq. ft.	Yr. Built	Sales Price	Price per sq. ft.
1	Plainview	5,088	1956	\$ 51,500	\$10.12
3	Plainview	6,100	1951	\$100,000	\$16.39
5	Pierce	5,460	1958	\$ 83,210	\$15.24
SUBJECT Osmond		12,500	1989	\$176,000	\$14.08 (Assessed Value)

The individual property record cards for Exhibit twenty-one are a part of the official record with separate Exhibit numbers. Some of the difference in prices is attributable to the difference in age. All of the sale properties are at least thirty years older than the subject property. There are great differences in size, with the subject being approximately twice the size of the sales. Also the building "type or class" of the commercial properties is a factor. The three sales are "class or type" "C" while the subject property is a "class or type" "S". These designate the basic type of construction. Class "C" buildings are Masonry or Concrete construction while Class "S" are

metal buildings. The complete definitions are found at page 5 of Section 1, Marshall Valuation Service. With no adjustments for any of the comparability factors addressing these considerable differences, the subject property (which is much newer and much larger) falls in at second from the lowest per square foot dollar cost. Exhibit eight concludes the value using the Sales Comparison Approach is **\$16.00 per square foot** (12,500 sq. ft. X \$16.00) for a total value of **\$200,000**. That valuation is supported by the Exhibits and testimony offered.

County Assessor's Income Approach supporting evidence is found in Exhibit twenty-three which shows the market rent per square foot for the subject and four comparable properties. Three of the sales were "S" type or class of building (which is the same as subject) and one was a "C" type or class of building. They ranged in size from 8,552 sq. ft. to 22,000 sq. ft. and are all occupancy code 340 which is the same as the Subject property. Subject property is the newest and is at the midpoint for size. The rentals array as follows: \$2.49; \$2.50; \$2.50; and \$2.62 per square foot. Subject is at \$1.92 per square foot.

Exhibit eight uses the professionally accepted mass appraisal income approach using the income formula of Gross Income less vacancy and expenses for a Net Operating Income. That is divided by a capitalization rate to arrive at an opinion of value. County used Gross Income of \$24,000; a Vacancy and Collection rate of 10%; an expense ratio of 12%; which arrived at a Net Operating Income of \$23,760. A "loaded" capitalization rate (includes tax rate) of 14% was used. The resultant value was **\$176,000 or \$14.08 per square foot**. The County Assessor correlated all three approaches to value determining that the weight should be given to the Income Approach to Value at \$14.08 per square foot and \$176,000 value. The exhibits and testimony supported the conclusion.

The Commission notes for the record that the 14% capitalization rate does not calculate to the \$176,000 value. ($\$23,760 \text{ divided by } .14 = \$169,714$. A capitalization rate of .135 reaches \$176,000) However, since the difference does not skew the final correlation, little weight was given that fact.

County Board of Equalization concurred with Taxpayer's evidence and testimony. County Board testified that it was their opinion that the location of the subject property in Osmond was the primary reason for the reduction in value from \$176,000 to \$146,000 for 1997. However, no evidence of a market analysis to show that there should be a location or economic factor for Osmond was offered. No competent or persuasive evidence or exhibits were received from the County Board of Equalization to support their decision to lower the county assessor's value from \$176,000 to \$146,000.

Role of the County Assessor

The county assessor, in most counties is an elected officer of the county. Neb. Rev. Stat. §23-3201 (Reissue 1991). All county assessors and ex-officio county assessors must hold a certificate issued by the Property Tax Administrator. Neb. Rev. Stat. §77-422 (Reissue 1996). The certificate can only be issued after the applicant has successfully completed the examination given by the Property Tax Administrator which is written to determine that the applicant has the requisite qualifications, fitness and ability to perform the duties of county assessor. Once in office, the county assessor must annually attend and successfully complete a course of training. Neb. Rev. Stat. §77-415 (Reissue 1996). These training courses are designed to impart a "thorough knowledge of the techniques for the valuation of real and personal property and to develop the essential administrative skills for the proper discharge of the duties of their offices."

Neb. Rev. Stat. §77-415 Reissue 1996). The county assessor is also offered advanced training on an annual basis. These advanced seminars provide further education in assessment methods and techniques which are supplementary to the annual training courses. Neb. Rev. Stat. §77-420 (Reissue 1996).

Costs of attending this training are borne by the county. Neb. Rev. Stat. §77-417 (Reissue 1996) The Assessor in the instant case met all the requirements to hold office, and participated in the annual training programs and advanced seminars according to the testimony. Furthermore, the uncontradicted evidence before the Commission establishes that the Assessor's determination of value of the subject property was made in accordance with professionally accepted appraisal methods.

Presumption That County Assessor Has Performed Statutory Duties Correctly

The county assessor must annually demonstrate his or her fitness to hold office by satisfying training and educational requirements. The assessment practices of each county assessor are reviewed during the annual statewide equalization proceedings. Neb. Rev. Stat. §77-5022 R.S.Supp., 1997). The quality of the assessment practices are also subject to review by the Property Tax Administrator. Neb. Rev. Stat. §77-1330 (Reissue 1996). Furthermore, the county assessor must, in performing the assessment function, comply with the provisions of the Nebraska Constitution, Nebraska State Statutes, and rules and regulations of the Property Tax Administrator. The assessor shall be removed from office for failure to comply with those statutes and regulations. Neb. Rev. Stat. §77-1314 (Reissue 1996). Given the mandated certification, training, continuing education, and penalties under which an assessor operates, some deference must be given to the assessment determinations which that assessor makes.

The Nebraska Supreme Court has had many occasions upon which to consider the deference to be given to the determinations of value for tax assessment purposes made by assessors. The Court has uniformly held that in proceedings before the County Board of Equalization the valuation made and returned by the county assessor is presumed to be correct. *Woods v. Lincoln Gas and Electric Co.*, 74 Neb. 526, 527 (1905), *Brown v. Douglas County*, 98 Neb. 299, 303 (1915), *Gamboni v County of Otoe*, 159 Neb. 417, 431, 67 N.W. 2d 489, 499 (1954), *Ahern v. Board of Equalization*, 160 Neb. 709, 711, 71 N.W. 2d 307, 309 (1955). The presumption accorded to the assessments made by the county assessor by the Nebraska Supreme Court must be accorded to the county assessors of this State by the various County Boards of Equalization.

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) (R.S.Supp.,1997). The Commission may, however, evaluate the evidence presented utilizing it's experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016 (5) (R.S.Supp.,1997).

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

1. That Taxpayers are the owners of certain commercial real property located in Osmond, Pierce County, Nebraska as legally described in the petition.
2. That Taxpayers timely filed a protest of the assessed value of their property for tax year 1997.

3. That the basis for the protest was the allegation that the subject property's valuation was "not in line with other businesses in town nor grocery stores in the area".
4. That the County Assessor proposed valuing the property at \$176,000 for purposes of taxation.
5. That the Taxpayers requested that the property be valued at \$105,525 for purposes of taxation.
6. That the County Board granted the request in part and reduced the valuation to \$146,000 for purposes of taxation.
7. That the County Assessor thereafter timely filed an appeal of that decision to the Tax Equalization and Review Commission.
8. That Taxpayers offered their version of an income approach, cost approach, and market approach to value for the subject property.
9. That Taxpayer's income approach to value does not meet professionally accepted appraisal methods.
10. That Taxpayer's cost approach to value does not meet professionally accepted appraisal methods.
11. That Taxpayer's sales comparison approach to value does not meet professionally accepted appraisal methods.
12. That no evidence was adduced which would establish that the treatment of the subject property by the Assessor was arbitrary, unreasonable or inequitable when compared to similar property in the county.

13. That although County Board's testimony is that the location of the subject property in Osmond negatively affects the fair market value of the subject property no competent evidence was provided to support that contention.
14. That County Board offered no competent evidence on any point or issue to contradict the County Assessor's determination of value for the subject property.
15. That County Assessor offered evidence supporting each of the three professionally accepted appraisal approaches to value; cost, sales comparison, and income.
16. That the Assessor's cost approach to value yielded a value of \$211,917.00
17. That the Assessor's sales comparison approach to value yielded a value of \$200,000.
18. That the most weight was attributed to the income approach, which yielded a valuation of \$176,000, which was also the lowest value of the three approaches to value.
19. Further that the value of the subject property for tax year 1997 as determined by the Assessor is supported by the evidence.
20. That the assessed value of the subject property for tax year 1997 as determined by the County is not supported by the evidence.
21. That sufficient evidence has been adduced to establish that the decision of the Pierce County Board of Equalization was unreasonable and arbitrary.

JURISDICTION

Jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (1997 Supp.).

STANDARD OF REVIEW

The Commission must affirm the decision of the county board of equalization unless the appellant demonstrates by a preponderance of the evidence that the decision made by the county board of equalization was not governed by reason, was absurd, exceeded the bounds of reason or moderation, or was made in disregard of the facts or circumstances and without some basis which would lead a reasonable person to the same conclusion. Title 442, Nebraska Administrative Code, Chapter 5, Section 018. *See also Harrison Square v. Sarpy Cty. Bd. Of Equal.*, 6 Neb. App. 454 (1998)

CONCLUSIONS OF LAW

The Commission, from the record before it, concludes as a matter of law that it has jurisdiction over the parties and the subject matter of this appeal. The Commission further concludes as a matter of law that, pursuant to Title 442, Nebraska Administrative Code, the Appellant (Assessor) has established by a preponderance of the evidence that the decision of the Pierce County Board of Equalization was unreasonable and arbitrary. The Commission must therefore, pursuant to Neb. Rev. Stat. §77-1510 (Reissue 1996), and hereby does conclude as a matter of law that the decision of the Pierce County Board of Equalization should be vacated and reversed.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That the decision of the Pierce County Board of Equalization which granted Taxpayers request in part, reducing assessed value, is vacated and reversed.

2. That Taxpayers' commercial real property known as Original Town Lots 2 and 6, Block 20, and West 40' of Lot 2, Village of Osmond, Pierce County, Nebraska, more commonly known as Petersen Florist and Food, shall be valued as follows for tax year 1997:

Land	\$ 5,525
Improvements	\$170,475
Total	\$176,000

3. That this decision, if no appeal is filed, shall be certified within thirty days to the Pierce County Treasurer, and the Pierce County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).

4. That this decision shall only be applicable to tax year 1997.

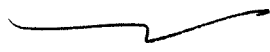
5. That each party is to bear its own costs in this matter.

IT IS SO ORDERED.

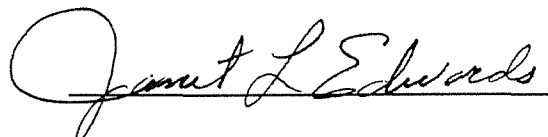
Dated this 6th day of March, 1998.



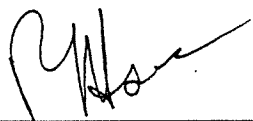
Seal



Mark P. Reynolds, Chairman



Janet L. Edwards, Commissioner



Robert L. Hans, Commissioner