

NATURE OF THE CASE

Don C. Bottorf ("Taxpayer") owns certain residential real property located in the City of Sutton, Clay County, Nebraska. Taxpayer filed a protest with the Clay County Board of Equalization ("County") alleging that the subject property is valued in excess of its actual value. By way of relief, Taxpayer requested that the proposed 1996 valuation of \$162,715 be reduced to \$86,980. County reviewed the property and reduced the valuation to \$144,160. Taxpayer was not satisfied and from that 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

The Commission took judicial notice of the following items: Case File 96R-0033; *Marshall Swift Residential Cost Handbook; Nebraska Assessor's Reference Manual, Volumes 1 and 2* (Reissue 1996); Nebraska Constitution; Nebraska State Statutes; LB397; the I.A.A.O. textbook *Property Assessment Valuation, Second Edition*, 1996; The Property Tax Division of the Department of Revenue Published 1996 Ratios and Measures of Central Tendency as required by Neb. Rev. Stat. §77-1327 (6); the 1996 Clay County Residential County Profile; Title 442 of the Administrative Code; and Uniform Standards of Professional Appraisal Practices (USPAP).

Taxpayer offered Exhibit 1 which is a packet of information on the subject property and Exhibit 2 which is the 1996 Notice of Valuation Change form for the subject property. Both exhibits were received without objection. County offered Exhibit 3 which is the subject property record card and supporting documents. It was also received without objection.

Taxpayer contends that the property was overvalued, and in support of this contention, referred the Commission to Exhibit 1. Exhibit 1 includes a copy of the Form 521 which shows the purchase price of the subject property. The purchase price for the sale dated October 10, 1995, was \$125,000. The property was acquired approximately three months before the assessment date of January 1, 1996 (Neb. Rev. Stat. §77-1301 (Reissue 1996)). Ordinarily, evidence of sale price for a transaction closely related in time to the assessment date should receive strong consideration in determining the assessed value of property. However, standing alone, that sale price is not conclusive of the actual value of the property for assessment purposes. *Dowd v. Board of Equalization of Boone County*, 240 Neb. 437, 446, 482 N.W.2d

583, 589 (1992). Here Taxpayer testified that the subject property was a custom built, multi-level house with some unique features for Sutton, Nebraska. Taxpayer further testified as to certain improvements he had made to the property such as painting, remodeling of the kitchen, and new carpet installation, as well as his estimate of the costs he incurred in making those improvements to the property. The purchase price did not include the costs of the improvements made by Taxpayer, and therefore does not constitute conclusive evidence of the value of the subject property.

Taxpayer also offered evidence regarding two houses which Taxpayer contends were assessed at a lower level of value than his property. The two properties offered by Taxpayer, however, do not satisfy the requirements of professionally accepted appraisal practices. "Comparable" 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 "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. Neither property is in fact "comparable" to the subject property when considered

in light of the style, size in square feet, quality of construction, or year built, as shown below:

Property	Year built	Sq. Ft.	Quality	Stories
Subject property	1984	2932	Very Good	2 Story
Griess property	1991	1884	Good	1 Story
Schrader property (1994 Finished basement)	1980	1482	Good	1 Story

Finally, Taxpayer complains of a lack of equalization of residential real property.

Taxpayer, in order to prevail on this allegation, must satisfy the requirements of the Nebraska Supreme Court case *Kearney Convention Center v. Buffalo County*, 216 Neb. 292, 344 N.W. 2d 620 (1984). Those requirements, as interpreted by the Commission, may be summarized as follows:

1. The Appellant must have information which possesses at least an indicia of credibility and which establishes that there is a lack of equalization of property which is:
 - a. of the same class of subclass as Appellant's, and,
 - b. similar (i.e. comparable) to Appellant's property, and,
 - C. which is located within the same "Market Area" within a county as Appellant's; and,
2. The Appellant must have presented the issue to the County Board of Equalization; and,
3. The County Board of Equalization, in light of that information, must be under a duty to act on the presented information at the time the

information was presented.

4. The Appellant must demonstrate that the County Board of Equalization failed to consider the information.
5. The Appellant must demonstrate that the County Board of Equalization failed to take any action regarding the information.
6. The Appellant must demonstrate that the failure of the County Board of Equalization to investigate or take any action was arbitrary and unreasonable.

The Commission therefore evaluates Taxpayers' allegations in light of this test. In the instant case, Taxpayer has met part of the requirements of the first, second and third tests. However, no clear and convincing evidence was adduced which would satisfy the requirements of the balance of the first, fourth, fifth and sixth tests. Furthermore, the 1996 Clay County Residential Profile demonstrates that the sales assessment ratio for Sutton was 95.01% and for the County as a whole was 93%. Both ratios are within the acceptable Residential Ratio range of 92% to 100% of actual or market value. The record before the Commission therefore does not support Taxpayer's contention that there is a lack of equalization.

The evidence before the Commission does show however that the County Board of Equalization viewed the property on July 2, 1997, and from that observation lowered the valuation from \$162,715 to \$144,160. The evidence adduced by Taxpayer, as shown by the record before the Commission, fails to demonstrate that the decision of the County was arbitrary and unreasonable.

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 Taxpayer owns certain residential real property located in the city of Sutton, Clay County, Nebraska.
2. That Taxpayer was dissatisfied with the valuation placed on the subject property by the County Assessor and timely filed a protest.
3. That after holding a hearing, County viewed the property and reduced the valuation from \$162,715 to \$144,160.
4. That Taxpayer was not satisfied and properly filed an appeal with the Tax Equalization and Review Commission.
5. That Taxpayer purchased subject real property October 2, 1995 for \$125,000.
6. That subject property is a custom built house with some unique characteristics for a house in Sutton, Nebraska, i.e. solar heat panels, an unusual number of windows, a sauna, and a built-in bedroom set.
7. That Taxpayer had repainted the house, had installed new carpeting in most of the house, and had remodeled the kitchen.

8. That the costs of these improvements are not reflected in the purchase price of the subject property.
9. That the two properties offered by Taxpayer as "comparable" properties do not meet the Professional Appraisal Standards for comparability and were therefore given little weight in the determination of value of subject property.
10. That the median sales assessment ratios for both Sutton and Clay County as a whole, as shown in the 1996 Clay County Residential Profile, were within the acceptable ratio range of 92% to 100% of actual (market) value.
11. That Taxpayer did not satisfy the criteria necessary to establish a lack of equalization between the subject property and other Sutton residential properties.
12. That no evidence was adduced to show that the Clay County Board of Equalization acted in an arbitrary and unreasonable manner in determining the valuation of subject property.

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). The definitions of the terms "unreasonable" and "arbitrary" are therefore the plain and ordinary definitions of those terms. "Unreasonable" is defined as "not governed by or acting according to reason, not conformable to reason; absurd; exceeding the bounds of reason or moderation" in *Webster's New Collegiate Dictionary* (1981).

The Supreme Court has explained that an administrative decision is "arbitrary" when it is made in disregard of the facts or circumstances and without some basis which would lead a reasonable person to the same conclusion. *Ponderosa Ridge LLC v. Banner County*, 250 Neb. 944, 554 N.W. 2d 151 (1996); *Central Platte NRD v. City of Fremont*, 250 Neb. 252, 549 N.W. 2d 112 (1996).

CONCLUSIONS OF LAW

The Commission must, for the reasons set forth above, and pursuant to Neb. Rev. Stat. §77-1510 (Reissue 1996), hereby does conclude as a matter of law that the action of the Clay County Board of Equalization should be affirmed.

ORDER

IT IS THEREFORE ORDERED as follows:

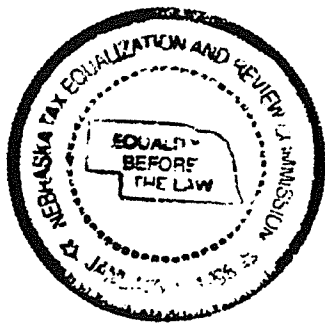
1. That the decision of the Clay County Board of Equalization which denied Taxpayers' protest is affirmed.
2. That Taxpayers' residential real property legally described in the petition, located in the city of Sutton, Clay County, Nebraska shall be valued as follows for tax year 1996:

Land	\$ 4,480
Improvements	\$139,680
Total	\$144,160

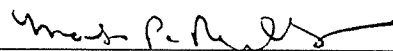
2. That this decision, if no appeal is filed, shall be certified within thirty days to the Clay County Treasurer, and the Clay County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
4. That each party is to bear its own costs in this matter

IT IS SO ORDERED.

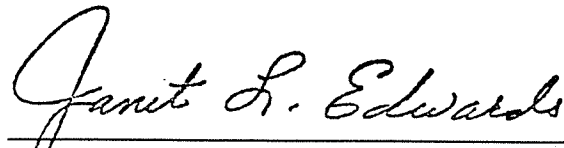
Dated this 26th day of September, 1997.



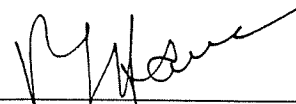
Seal



 Mark P. Reynolds, Chairman



 Janet L. Edwards, Commissioner



 Robert L. Hans, Commissioner