

BEFORE THE NEBRASKA TAX EQUALIZATION  
AND REVIEW COMMISSION

OMAHA NEBRASKA HOTEL )  
LIMITED PARTNERSHIP, )

Case No. 96R-144

Appellant(s), )

vs. )

FINDINGS AND ORDERS

DOUGLAS COUNTY BOARD OF )  
EQUALIZATION, )

Appellee. )

Filed July 8, 1997

Appearances:

For the Appellant: Mark L. Nunneley  
14180 Dallas Parkway #810  
Dallas, TX 75240

For the Appellee: Jeanne A. Burke  
Douglas County Deputy Attorney  
909 Civic Center  
Omaha, NE 68183

Before: Commissioners Edwards, Hans and Reynolds

Edwards, 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 assessed value of the subject property.

## NATURE OF THE CASE

Omaha Nebraska Hotel Limited Partnership ("Taxpayer") owns certain commercial 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 the value of their commercial property was over market value. By way of relief, Taxpayer requested that the proposed 1996 valuation of \$4,220,300 be reduced to \$2,179,185. 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

The Commission took Judicial notice of the following items: the case file 96R-144; *Marshal Swift Valuation Service; Nebraska Assessor's Reference Manuals, Volumes 1 and 2*; the I.A.A.O. text book, *Property Assessment Valuation, Second Edition*; the Property Tax Division of the Department of Revenue Published 1996 Ratios and Measures of Central Tendency; the Douglas County 1996 Commercial County Profile; Title 442, the Commissions Rules and Regulations; Uniform standards of Professional Appraisal Practice; Cole, Layher, and Trumble Appraisal manual; and LB397 effective March 14, 1997.

Taxpayer offered Exhibits #1 through #4. The first three were received into the record and Exhibit #4 was denied. County offered Exhibits #5 through #17. All were received into the record.

The Omaha Ramada Inn was one of six Ramada Inn Hotels purchased in one purchase agreement by Ashford Financial Corporation, in an agreement dated September 23, 1994. The total price for all six properties was \$20,250,000. \$3,000,000 of that amount was allocated to the Omaha Ramada Inn, which the parties to the agreement agreed should be allocated as follows:

Land	\$ 600,000
Buildings	\$1,591,625
Personal Property	\$ 658,375
Goodwill	\$ 150,000

The purchase agreement, included in Exhibit 2 also recites that "The parties agree that this allocation has been arrived at by a process of arm's-length negotiations, including the parties' best judgment as to the fair market value of each respective asset, and the parties specifically agree to the allocation as final and binding, and will consistently reflect those allocations on their respective Federal, state and local tax returns." (Ex. 2, p. 5). The Commission notes that, under Nebraska Supreme Court decisions, "It is well established law in this state that the interpretation given to a contract by the parties themselves while engaged in the performance of it is one of the best indications of true intent and should be given great, if not controlling, influence." *Nowak v. Burke Energy Corp.*, 227 Neb. 463, 418 N.W.2d 236 (1988). Although the County's evidence included evidence of the 1988 sale, the County never addressed this 1994 sale in its valuation of the subject property, and has offered no evidence to rebut the value of the property under this sale.

Taxpayer also testified at the hearing before the Commission that all six properties were listed in their respective real estate markets independently for approximately 18 months. No sale was closed for any of the six properties. Taxpayer also testified that the six properties were sold as a package deal in an arms length transaction.

Taxpayer's Exhibit 2 is labeled a "Market Value Analysis." The narrative in the Exhibit states that the "Cost Approach" is not usually used in the valuation of hotels or motels. The narrative does state that the "Income Approach" is most often used in the valuation of hotels and motels, since those types of properties are most often purchased for their profit and investment potential.

The Exhibit also states that the subject property is a "full service" hotel rather than a "limited service" hotel. The evidence also alleges that "limited service" hotels

are more profitable than "full service" hotels, such as the subject property.

Taxpayer also testified that the subject property had not been remodeled, and that no new construction had been done at the subject property between the purchase date and January 1, 1996. There was testimony that some redecorating and replacement of personal property had taken place between the purchase date and the assessment date.

In response to this evidence, County offered exhibit 7, showing that the Ramada Hotel Operating Company purchased the subject property for \$5,740,000 in September of 1987. From County Exhibit 8, the subject property record card, the subject property had an assessed value of \$4,220,500 in 1988. The assessed value remained in that amount for tax years 1989, 1990, 1991, 1992, 1993 and 1994. The assessed value was decreased in 1995 by \$200.00. The decrease reflected a reduction in the assessed value of the land, since a parcel of land which previously had been part of the subject property had been transferred to the City of Omaha. The property carried an assessed value of \$4,220,300 for both tax years 1995 and 1996.

This valuation, essentially unchanged since 1988, is troublesome. Exhibit Number 2 contains data from "Hotel Investment Outlook," a national publication that is widely recognized in investment circles, which shows the hotel/motel business underwent a severe economic downturn during the early 1990's. That downturn is only recently beginning to turn around. The County records do not reflect any changes to the market value of the subject property over an eight year period, when the evidence establishes that there was a decrease in the market value of hotel properties, and when the depreciation factor should have increased due to age, condition, heavy use, etc..

The County's exhibits also demonstrate an additional area of concern. The County's comparables, consist of a number of hotels. However, of the comparables adduced, only the Best Western is a "full service" hotel/motel such as the subject property. There is no evidence as to the size of the adjustment necessary under professionally accepted mass appraisal methods in order to properly utilize these "comparables" for the purpose of valuing the subject property. Even the use of the Best Western Hotel, however, is problematic. That "comparable" is on a "Major Strip" or arterial road, whereas the subject property is on a secondary strip.

The Best Western Hotel, however, is also the only comparable which approximates the subject property in size (the subject is located on approximately 4 acres of land while the comparable property is located on 4.846 acres of land; the

subject property has 215 rooms, the comparable property has 213 rooms; the size of the subject property is 133,300 square feet, the comparable has 103,912 square feet). However County's Exhibit 15, which contains the property record cards of the alleged comparables, shows that the Best Western Hotel has been renovated and improved several times over the past several years. In spite of those improvements and renovations that hotel is only valued at \$3,442,300 for 1996, which is \$778,000 less than the subject property. Again, from the property record cards, no depreciation for any cause is discernible for purposes of comparison.

#### 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. That the Taxpayer is the owner of certain commercial real property legally described as Lawnfield Lot 5 Block 12 Exc No 17 Ft and S 10 N 27 E 10 Ft Tria Lot 1 and all lots 2 & Inc., more commonly known as 7007 Grover Street.
2. That Taxpayer was dissatisfied with the valuation of the commercial property and timely filed a protest with the Douglas County Board of Equalization.
3. That County's decision denied Taxpayer's protest.
4. From such decision, Taxpayer filed a proper appeal with the Tax Equalization and Review Commission.
5. That from the evidence, county's comparables were inadequate. Only one comparable was a "full service" hotel/motel of comparable size, built relatively at the same time, in a similar location.
6. That this one comparable was valued substantially lower than the subject property, in spite of the fact that this comparable had been renovated and remodeled several times over the past several years, while the subject property had not.

7. That one comparable does not provide a statistically sound basis from which to derive reliable valuation conclusions.
8. That a valuation placed on the subject property in 1987 that has not been adjusted for any purpose for nine years, even though the evidence shows a marked decline in the hotel/motel business for several of those years, provides only a questionable estimation of fair market value.
9. That the subject property value is substantially higher than the one county comparable considered even though the comparable has had substantial renovation and remodeling.
10. That the assessed value of the subject property for tax year 1996 is not supported by the evidence adduced by County.
11. That Taxpayer adduced evidence in Exhibit #1 to establish that the decision of the County was unreasonable or arbitrary.
12. That according to the Taxpayer's Market Value Analysis, Exhibit #2, the market value of the subject property value was \$2,215,675.

### 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).

Finally, 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).

*[Handwritten signature]*  
Commissioner

CONCLUSIONS OF LAW

The Commission must, for the reasons set forth above, and pursuant to Neb. Rev. Stat. §77-1510 (Reissue 1996), and hereby does conclude as a matter of law that the action of the Douglas County Board of Equalization should 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 known as 7007 Grover St, Omaha, Douglas County, Nebraska shall be valued as follows for tax year 1996:

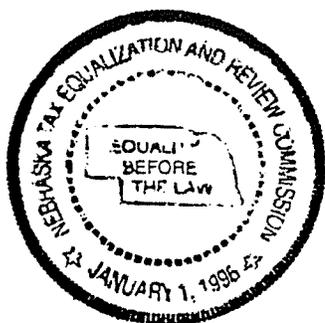
Land	\$ 547,900 (value of land as determined by County)
Improvements	\$1,667,775
Total	\$2,215,675

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 8<sup>th</sup> day of July, 1997.



Seal

Mark P. Reynolds, Chairman

Janet L. Edwards, Commissioner

Robert L. Hans, Commissioner