

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW
COMMISSION

LEROY W. HOFFMAN)
)
 Appellant,)
)
 vs.) FINDINGS AND ORDERS
)
)
 JEFFERSON COUNTY BOARD OF)
 EQUALIZATION,)
)
 Appellee.)

Filed April 8, 1997

Appearances:

For the Appellant: LeRoy W. Hoffman
1340 Garber Avenue
Lincoln, NE 68521

For the Appellee: Arliss Brown, Designee
Jefferson County Assessor
411 4th Street
Fairbury, NE 68352

Before: Commissioners Edwards, Hans and Reynolds

Edwards, for the Commission:

SUMMARY OF DECISION

The Commission finds the Jefferson County Board of Equalization acted in an arbitrary or unreasonable manner in denying Taxpayer request for lower valuation due to physical condition and termites. Commission reverses Jefferson County Board of Equalization decision.

NATURE OF THE CASE

Mr. LeRoy W. Hoffman ("Taxpayer") was dissatisfied with the County Assessor's valuation placed on his rental residential property in Jefferson County. He timely filed a protest to the Jefferson County Board of Equalization ("County"). After holding a hearing, County denied Taxpayer's protest. From such decision Taxpayer filed this appeal with the Tax Equalization & Review Commission.

DUTIES OF THE PARTIES

Taxpayer, if dissatisfied with the county assessor's determination of assessed value of Taxpayer's real property, must timely file a written protest with County. Neb. Rev. Stat. §77-1502 (Reissue 1996). Between June 1 and July 25 of each year, County reviews and decides those protests. County is required to fairly and impartially equalize the value of all items of nonagricultural real property in the county so that all such real property is assessed uniformly and proportionately, with no action taken before June 1 nor after July 25 of each year. Agricultural and Horticultural land, as defined in section 77-1359, adjustments and corrections are statutorily specific. Neb. Rev. Stat. §77-1504 (Reissue 1996).

ANALYSIS

The Commission took judicial notice of the following: the pleadings in Case File 96R-178; *Marshall & Swift Residential Cost Handbook*; *Nebraska Assessor's Reference Manuals*, volumes 1 & 2; the I.A.A.O. textbook, *Property Assessment Valuation, Second Edition*; Property Tax Division of the Department of Revenue Jefferson County Published 1996 Ratios and Measures of Central Tendency as required by Neb. Rev. Stat. §77-1327 (6); 1996 Jefferson County residential county profile; and *Uniform Standards of Professional Appraisal Practices*.

Taxpayer alleged that County had placed a disproportionate value on his property compared to like properties in Fairbury and more specifically in his neighborhood. The subject property is a rental property that rents for \$400 per month. Taxpayer testified that the property had termite damage dating back at least three years when he purchased the property. Taxpayer also testified that the house had been treated for termites, however, the result was not guaranteed and there was permanent damage. A contract between Hoffman Realty and Williams Exterminating Co. From November 3, 1993 requiring the sellers to pay for the inspection is part of

Exhibit #7. Taxpayer offered Exhibits #1 thru #6 which were information on the subject property and comparables. Taxpayer contended that Exhibit #13, offered by the County, was the most comparable to his property. That property is on the same street, and has the same design and construction. That property, which from the record has no termite damage, is valued at \$31,000. Taxpayer purchased the subject property in November of 1993 for \$20,000. A list of capital improvements with a total investment of \$5,265.97 was included with the appeal. Taxpayer alleges that a valuation of \$35,100 is an overstatement of the value that this property can support and is greater than like properties that are in better physical condition.

County offered Exhibits #7 thru #15 which are copies of the subject property record, comparable properties property records, and an appraisal done by the appraiser from the appraisal company hired by Jefferson County to do the reappraisal. Jefferson County had a complete reappraisal of residential property placed on the tax rolls for 1996. County Assessor stated that the average increase in residential property value was 60%. Although this is a rental property, as established from the record, no mention was made of using an income approach Gross Rent Multiplier (GRM) to support County's Replacement Cost New valuation. County determined that subject property value is proper and accurate and is comparable to similar properties in Fairbury.

From the record before it, the Commission determined that the subject property shows damage from age, physical deterioration, and is in poorer condition than the property described in Exhibit #13. From Exhibit #4 and testimony, there are still necessary repairs and maintenance to be done to the subject property, such as replace rotting porch floor, proper porch floor supports, exterior painting and basement repairs. Furthermore, termite infestation does negatively affect market value. Taxpayer offered the list of improvements made and the cost of such improvements to demonstrate that he has invested \$25,265.97 in the subject property since 1993. The Referee report, found in Exhibit #7, lists expenditures of \$525.00 for termite control, \$7,000 for improvements and \$1,100 for maintenance since purchase. However, no evidence was offered to support those figures. In County comparables, found in Exhibits #8 through #12 and #15, the house values range from \$20,319 to \$40,679. Standard appraisal methods would require substantial adjustments in order to use these properties as comparables for the subject property. Taxpayer's contention that the property depicted in Exhibit #13 is a true comparable as it is the same style, quality, design, age, and on the same block as the subject property, is well founded.

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:

- I. That Taxpayer owns residential property located at 920 F Street, in Fairbury, Jefferson County, Nebraska.
- II. That Taxpayer was dissatisfied with the valuation placed on the subject property by the Jefferson County Assessor.
- III. That Taxpayer did timely file a protest with the Jefferson County Board of Equalization.
- IV. That the County properly held a hearing and issued a decision to deny Taxpayer's request for a reduction in value.
- V. That from that decision Taxpayer did timely file an appeal with the Tax Equalization & Review Commission.
- VI. That subject property was purchased in 1993 for \$20,000 with \$5,265.97 worth of improvements made to the subject property.
- VII. That there had been termite infestation and there had been an inspection and some treatment had been done.
- VIII. That the value of a comparable property located in the same neighborhood as the subject property is valued at \$31,000.
- IX. That the assessed value of the subject property, based on the evidence, is \$25,265.

JURISDICTION

The jurisdiction of the Tax Equalization & Review Commission is set forth in Neb. Rev. Stat. §77-5007 (Reissue 1996).

STANDARD OF REVIEW

The "Unreasonable or Arbitrary" Standard before the Commission

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

Taxpayer offered evidence to substantiate his allegation that his property is valued at a higher level than comparable properties in his neighborhood. His evidence supports a valuation of \$25,265 which is greater than the value he requested on his appeal to the Commission. The subject property photographs show measurable physical deterioration and the comparable property photographs found in Exhibit #13 show a property in much better overall condition. Although the exact extent of termite damage was not demonstrated, the fact that termites had been found in the structure and some treatment had been contracted for sustained the fact that termites had damaged the structure. The Commission must, therefore, and hereby does conclude as a matter of law that the Jefferson County Board of Equalization action was arbitrary or unreasonable. The Commission reverses the decision of the Jefferson County Board of Equalization denying Taxpayer's request for a reduction in value for the subject property.

ORDER

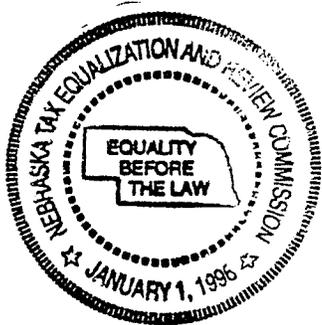
IT IS, THEREFORE, ORDERED as follows:

- I. That the 1996 decision of the Jefferson County Board of Equalization is reversed.
- II. That the 1996 value for the subject property located at 920 F Street, Fairbury, Jefferson County, Nebraska shall be:

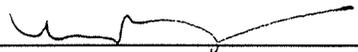
Land	\$ 2,181.00
House	\$23,084.00
Total	\$25,265.00
- III. That this decision, if no appeal is filed, shall be certified within thirty days to the Jefferson County Treasurer, and the Jefferson County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
- IV. That each party is to bear its own costs in this matter

IT IS SO ORDERED.

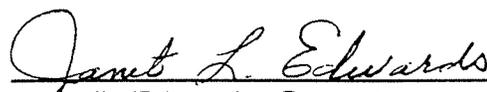
Dated this 8th day of April, 1997.



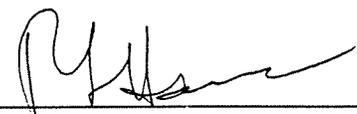
Seal



Mark P. Reynolds, Chairman



Janet L. Edwards, Commissioner



Robert L. Hans, Commissioner