

**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

DANIEL K. ARTERBURN AND
CONNIE S. ARTERBURN,

Appellants,

v.

RED WILLOW COUNTY BOARD
OF EQUALIZATION,

Appellee.

CASE NO. 97R-40

DOCKET ENTRY
AFFIRMING DECISION
OF APPELLEE

The Nebraska Tax Equalization and Review Commission ("Commission") called the above-captioned case for hearing on the merits in the City of Lexington, Dawson County, Nebraska, on the 1st day of June, 1998, pursuant to a Notice of Hearing issued the 15th day of April, 1998.

Appellants appeared personally at the hearing, and Appellee appeared through counsel. During the hearing, the Commission took judicial notice of certain information, and each of the parties was afforded the opportunity to present evidence and argument. Each party was also afforded the opportunity to cross-examine witnesses of the opposing party as required by law.

Neb. Rev. Stat. §77-5018 (1997 Supp.), requires that every final decision and order entered by the Commission which is adverse to a party be stated in writing or on the record and be accompanied by findings of fact and conclusions of law. The Commission, after receiving the exhibits and hearing evidence and argument, entered its Findings of Fact, Conclusions of Law, and a Final Order on the merits of the appeal in this case, which were in substance as follows:

FINDINGS OF FACT

From the record, the Commission found and determined as follows:

- I. That Appellants are the owners of record of certain residential real property as described in the petition in this case.
- II. That Appellants timely filed a protest of the assessed value of their property for tax year 1997.
- III. That the basis for the protest was the allegation that due to a fire in 1996, the house had to be reconstructed, and a number of items were not completed as of January 1, 1997.
- IV. That the County Assessor proposed valuing the property at \$176,030 for the purposes of taxation.
- V. That the Appellants requested that the property be valued at \$81,780 for purposes of taxation.
- VI. That the Appellee granted the protest in part, and reduced the assessed value to \$147,145.
- VII. That Appellants thereafter timely filed an appeal of that decision to the Commission.
- VIII. That the subject property was built new in 1995, being first occupied in December 1995. That the subject property suffered substantial fire damage in February, 1996.
- IX. That the house was rebuilt during 1996, but was uninhabitable as of January 1, 1997. Further that the Assessor observed that there was no basement finish nor floor covering and those items were not priced for the 1997 valuation.
- X. That Taxpayers' list of unfinished items, Exhibit 2, included floor coverings already accounted for and items defined as personal property, not real property, which are not valued for real property valuation.

- XI. That Taxpayers' testimony as to fair market value as of January 1, 1997, ranged from \$220,000 to appraised value of \$260,000, if not for the incomplete items.
- XII. That County testified that the Marshall Swift Residential Cost Manual is used to determine Replacement Cost New. The Edition used for Rural and Suburban Properties within the County is 1988, which results in a lower Replacement Cost New than a more recent edition, making an inequitable lower value for those properties located in rural and suburban areas.
- XIII. That using Taxpayer's estimation of \$220,000 for fair market value, and Taxpayer's determination, using the Marshall Swift Worksheet, that the improvement was 69% complete as of January 1, 1997, results in an assessed value of \$151,800. This amount is greater than the value determined by the Red Willow County Board of Equalization.
- XIV. Further that the assessed value of the subject property for tax year 1997 is supported by the evidence.
- XV. That insufficient evidence has been adduced to establish that the decision of the Appellee was unreasonable or arbitrary.

CONCLUSIONS OF LAW

- I. That the Commission has jurisdiction over the parties and the subject matter of this appeal.
- II. That the Commission is required by Neb. Rev. Stat. §77-1511 (Reissue 1996) to affirm the decision of the Appellee unless evidence is adduced establishing that the action of the Appellee was unreasonable or arbitrary.

- III. That based on the record before the Commission, insufficient evidence has been adduced to establish that the action of the Appellee in this case was unreasonable or arbitrary.
- IV. That the Appellant has failed to establish by a preponderance of the evidence that the decision of the Red Willow County Board of Equalization was unreasonable or arbitrary.
- V. That the Commission must, therefore, and hereby does conclude as a matter of law that the decision of the Red Willow County Board of Equalization which set the assessed value of the subject property for purposes of taxation at \$147,145 for tax year 1997 was neither unreasonable nor arbitrary.
- VI. Further that the decision of the Red Willow County Board of Equalization must be affirmed.

ORDER

- I. That the order of the Red Willow County Board of Equalization setting the assessed value of the subject property for tax year 1997 at \$147,145 is affirmed.
- II. That Appellants' real property legally described as Willow Grove Precinct, Section 20, Township 3, Range 29, consisting of part of the SW 1/4 of the NE 1/4, approximately 8.81 acres, Red Willow County, Nebraska, shall be valued as follows for tax year 1997:

Land	\$ 1,285
Improvements	\$145,860
Total	\$147,145

- III. That this decision, if no appeal is filed, shall be certified within thirty days to the Red Willow County Treasurer, and the Red Willow County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
- IV. That this decision shall only be applicable to tax year 1997.
- V. That each party is to bear its own costs in this matter.

The above and foregoing Findings of Fact, Conclusions of Law, and Order were approved by a quorum of the Commission, and entered of record on the 1st day of June, 1998, and are therefore deemed to be the Order of Commission in this case, pursuant to Neb. Rev. Stat. §77-5005. (Reissue 1996).

Signed and sealed this 15th day of June, 1998.

SEAL





Mark P. Reynolds, Chairman