

NATURE OF THE CASE

S & C Inc. was represented by Mr. Charles Clatterbuck, an officer of the corporation ("Taxpayer"). Taxpayer filed a proper and timely protest with the Sarpy County Board of Equalization ("County") because he was dissatisfied with the valuation the County Assessor had placed on his commercial property. That commercial property is a small commercial office building. It is located on a side hill with limited ingress and egress over property also owned by Mr. Clatterbuck. Taxpayer testified that the limited parking would adversely affect the market value of the subject property. Taxpayer alleged that County erred in the application of the income approach to value in establishing his valuation. County denied the protest, from which decision Taxpayer appeals.

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 values 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).

EVIDENCE OFFERED

Taxpayer provided an income and expense statement the day after the hearing; at the request of the Commission (Exhibit #1). County provided Exhibit #2, which is the subject property record card from the Assessor's office the day after the hearing, also at the request of the Commission. Taxpayer had provided his version of the income approach to value and a picture of the subject property in the original case file. He testified that he had used actual income and expense figures and used the assessor's vacancy rate and capitalization rate arriving at a valuation less than what the County had. He offered no other exhibits. The Commission took Judicial Notice of the pleadings in the Case File 96R-0072; Title 442 of the Administrative Code (Tax Equalization and Review Commission's Rules and Regulations); *Marshall & Swift Valuation Service*; *Nebraska Assessor's Reference Manuals, Volumes 1 and 2*; the I.A.A.O. textbook, *Property Assessment Valuation, Second Edition*; the Property Tax

Division of the Department of Revenue's Published 1996 ratios and measures of central tendency as required by Neb. Rev. Stat. §77-1327 (6); and the 1996 Commercial Profile for Sarpy County.

ANALYSIS

Taxpayer testified that this property's location is less than adequate due to its irregular shape and size. It has limited parking spaces and does not face Galvin Road which is the main artery in the area. It has one tenant currently, a Finance Company. Taxpayer's contention is that this property would have limited prospective tenants interested due to limited parking and no access.

County testified that although there is not a great amount of parking, it has proven to be adequate for the current and just previous owner. The problem of ingress and egress will be a factor when and if current owner wishes to sell as he has total control of all properties involved. How much subject property's market value is affected by facing away from Galvin Road was never addressed in a specific manner by either party.

Taxpayer presented his income approach worksheet, which is included in the case file. Taxpayer used actual net operating income and also deducted a 5% vacancy rate used by the assessor's office. When actual income is used, proper appraisal techniques prohibit the use of a vacancy rate since any vacancy that occurred was accounted for in the actual income. Taxpayer stated his actual expenses were greater than the 25% expense ratio used by the assessor's office, so he added an extra 5% to expense ratio deduction. However, Taxpayer's actual expenses from his income/expense statement (Exhibit #1) when edited for only the allowable expense items to be used in the income approach (as defined in the I.A.A.O. Property Assessment Valuation textbook, pages 217 thru 220) Taxpayer's actual expenses were less than 30% and included the real property taxes. Taxpayer used the County capitalization rate of 12% which was calculated using the band of investment method. It is comprised of a 9.5% Discount Rate, which accounts for the cost of money and yield to equity, (as defined in Property Assessment Valuation page 230) and a 2.5% Tax Rate, which is the tax rate applicable to the district in which the subject property is located, as testified to by the County Appraiser. Taxpayer also included real estate taxes in his allowable expense items that are deducted from gross income to arrive at net operating income (NOI). It is proper to account for real estate taxes in the income approach to value, but only once. Either via the tax rate as a portion of the capitalization rate or as an expense item. If the calculations are made using the 9.5% capitalization rate, and "actual expenses, including real estate

taxes", the resulting assessed value is greater than the valuation placed by County.

Taxpayer stated that other properties he considers comparable have higher capitalization rates. (The higher the capitalization rate the lower the value will be, refer to page 232 Property Assessment Valuation 2nd edition) If calculations are made using actual income and expense figures and a cap rate of 12.25% or 13%, the resulting valuation is greater than the valuation placed by County. If County's NOI is used with the 12.25% cap rate, the valuation is very nearly the same as with the 12% cap rate, using a 13% cap rate, the valuation is less than current assessed value. No evidence was adduced to show that County used an inappropriate capitalization rate for this subject property.

The Sarpy County Appraiser testified as to County's methodology of gathering rental information for commercial properties. He stated that rental statistics are gathered via informational questionnaires mailed to all commercial property owners. He also testified how capitalization rates are developed for comparable properties and market areas of the County. The cost of money (the discount rate) is affected by the risk of the investment, location of the property, and desire of the investors. The tax rate varies from district to district based on local subdivision budget requests. Taxpayer adduced no evidence to contradict County's methodology.

When actual figures and mass appraisal techniques are mixed, the result is an incorrect and skewed valuation. Mass appraisal techniques strive to arrive at a fair market value for the typical property in the class being appraised. Taxpayer's allegation that County's income approach to value was not properly applied to the subject property is erroneous.

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 certain commercial real property located in the City of Bellevue, Sarpy County, Nebraska.
- II. That Taxpayer was dissatisfied with the value placed on his commercial real property for 1996 and timely filed a protest with County.
- III. That County held a hearing and denied Taxpayer's request for a reduction in his real property valuation.
- IV. That Taxpayer properly and timely filed an appeal from that decision to the Tax Equalization and Review Commission.
- V. That the Sarpy County Commercial median ratio of 94% was within the 1996 acceptable commercial ratio range of 92% to 100% as set by the State Board of Equalization and Assessment.
- VI. That Taxpayer used an inappropriate income approach to value because he used both his actual income and expenses as well as County's mass appraisal income approach statistics to arrive at an assessed value which is incorrect and does not reflect the fair market value of the subject property.
- VII. That County was reasonable in its application of the income approach to value for this commercial property in Sarpy County.

JURISDICTION

The Tax Equalization & Review Commission has jurisdiction of this case pursuant to Neb. Rev. Stat. §77-1233.04 (6) (Reissue 1996).

STANDARD OF REVIEW ANALYSIS

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's assertion that the size of the lot and amount of parking spaces made it more difficult to rent was not supported by evidence of vacancy or long exposure to the market. County testified that it was not apparent in their studies that the market was unduly affected by such factors. Taxpayer's methodology in calculating his assessed value using the income approach was incorrect. Taxpayer's calculations included both actual figures and the County's mass appraisal statistics resulting in an erroneous value. Taxpayer's allegation that County's income approach to value was not properly applied to the subject property is not correct. Taxpayer's allegation that the capitalization rate of 12% was not appropriate for the subject property was not supported by factual evidence. The Commission must, therefore, and hereby does conclude as a matter of law that the Sarpy County Board of Equalization did not act in an arbitrary or unreasonable manner. The Commission affirms the decision of the Sarpy County Board of Equalization in denying Taxpayer request for a reduction in value.

ORDER

IT IS, THEREFORE, ORDERED as follows:

- I. That the 1996 decision of the Sarpy County Board of Equalization is affirmed.
- II. That the value for S & C Partnership, located on Tax Lot 2A2B 35-14-13, containing .20 acres, Tax Lots to Bellevue, Nebraska shall be:

Land:	\$ 17,726.00
Buildings:	\$139,630.00
Total:	\$157,356.00

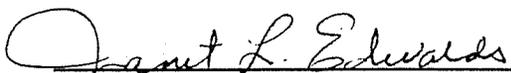
- III. That this decision, if no appeal is filed, shall be certified within thirty days to the Sarpy County Treasurer, and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
- IV. That each party is to bear it's own costs in this matter.

IT IS SO ORDERED.

Dated this 24th Day of March, 1997



Mark P. Reynolds, Chairman



Janet L. Edwards, Commissioner



Robert L. Hans, Commissioner

