

BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION

EDWIN M. AND FLORENCE)
HAAS)

Appellant,)

vs.)

SAUNDERS COUNTY BOARD OF)
EQUALIZATION,)

Appellee.)

Case No. 96R-0250

FINDINGS AND ORDER

Filed February 18, 1997

Appearances:

For the Appellant: Edwin M. Haas
RFD 1, Box 52
Ceresco, NE 68017

For the Appellee: None

Before: Commissioners Edwards, Hans and Reynolds

Reynolds, Chairman:

NATURE OF THE CASE

The Commission reverses the decision of the Saunders County Board of Equalization, and reduces the assessed valuation to that requested by the Taxpayers, since Saunders County failed to answer the appeal or to appear at a "show cause" hearing.

NATURE OF THE CASE

Edwin M. and Florence Haas, ("Taxpayers") challenged a decision of the Saunders County Board of Equalization ("County"). The appeal arose from a decision of the Saunders County Assessor to assess Taxpayers' agricultural property, consisting of certain land and improvements, at \$101,845. Taxpayers protested this determination of value to County. After a hearing, County denied the protest, from which decision Taxpayers appeal.

DUTIES OF THE PARTIES

Taxpayers, if 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). Between June 1 and July 25 of each year, County reviews and decides those protests. County is required to fairly and impartially equalize the assessments which it reviews. Neb. Rev. Stat. §77-1504 (Reissue 1996).

EVIDENCE OFFERED

County failed to answer the Notice in Lieu of Summons issued by the Commission. The Commission thereafter issued a Notice of Show Cause Hearing by certified mail, return receipt requested. County failed to appear for the "show cause" hearing. The only evidence properly before the Commission consists of the appeal form filed by Taxpayers, the attachments thereto, and the testimony of Taxpayers regarding valuation of comparable property. The uncontradicted evidence before the Commission establishes that County proposed to value Taxpayers' land at \$73,900 for tax year 1996, and the improvements to that land at \$27,945, for a total of \$101,845. Taxpayers requested that the value of their land, but not the improvements to that land, be reduced. Taxpayers specifically requested that the value of the land be reduced from \$73,900 to \$65,000.

FINDINGS OF FACT

From the pleadings and the evidence the Commission finds and determines as follows:

I. Taxpayers own certain agricultural property in Saunders County which is subject to taxation.

II. The property consists of a parcel described as follows:

The East 1/2 of the Northeast 1/4 of 24-13-7, Saunders County, Nebraska, consisting of approximately 80 acres, more or less.

III. That the proposed assessed value of the property for tax year 1996 as determined by the County Assessor is as follows:

Land	\$ 73,900
Improvements	\$ 27,945
Total	\$101,845

IV. That Taxpayers filed a protest with County, challenging the assessed valuations of their property.

V. That County denied the protest.

VI. That Taxpayers timely prosecuted this appeal challenging the decision of County.

JURISDICTION

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

STANDARD OF REVIEW ANALYSIS

I.

The "Unreasonable or Arbitrary" Standard in the Courts

Neb. Rev. Stat. §77-1511 (Reissue 1996) states "The commission shall affirm the action taken by the board unless evidence is adduced establishing that the action of the board was unreasonable or arbitrary or unless evidence is adduced establishing

that the property of the appellant is assessed too low.”

The Nebraska Supreme Court, in determining its role within the assessment process, held “In reviewing the actions of tribunals created by law for ascertaining the valuation and equalization of property for taxation purposes, courts will not usurp the functions of such tribunals. It is only where such assessed valuations are not in accordance with law, or it is made to appear that they were made arbitrarily or capriciously, that courts will interfere.” *Hastings Bldg. Co. V. Board of Equalization of Adams County*, 190 Neb. 63, 72, 206 N.W.2d 338, 344 (1973), citing *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d. 47, (1959). This position was in keeping with an earlier case where the Court held:

“The court is not a board of review to correct errors. It is solely where there is evidence a systematic purpose on the part of a taxing board to cast a disproportionate share of the public burden on one taxpayer, or classes of taxpayers that the court will intervene.” *LeDioyt v. Keith County*, 161 Neb. 623, 74 N.W.2d 455, 462 (1956).

The Court then enunciated the standard which the courts in this state would apply when taxpayers challenge the assessed valuations of real property.

“In an appeal to the county board of equalization or to the district court, and from the district court to this court, the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment.” *Hastings Bldg. Co. V. Board of Equalization of Adams County*, 190 Neb. 63, 72, 206 N.W.2d 338, 344 (1973), citing *Lexington Bldg. Co. V. Board of Equalization*, 186 Neb. 821, 187 N.W.2d 94 (1971).

The effect of this holding is to interpret, and therefore to define, “unreasonable or arbitrary” as “grossly excessive and the result of an illegal act.” Under such circumstances, the history of such an interpretation requires examination. The holding in *Hastings Bldg. Co.* cited *Newman, supra*, which in turn cited *LeDioyt v. County of Keith*, 161 Neb. 615, 74 N.W.2d 455 (1956). The *LeDioyt* case also dealt with a challenge to the assessed valuation of real property. In that case, the Court held “In *Daniels v. Board of Review*, 243 Iowa 405, 52 N.W.2d 1, 9 it is said:

'A final word should be said as to the taxpayers' burden in these cases. On the claim of assessment in excess of actual valuation something more than a difference of opinion must be shown. Justice Bliss in the recent case of *Clark v. Lucas County Board of Review*, had this to say of the taxpayer's burden on appeal from an assessment:

"The burden on the complaining taxpayer is not met merely by showing a difference of opinion between his witnesses and the assessor, unless it is manifest that the assessment is grossly excessive and is a result of the exercise of the will and not of the judgment." [citations omitted.]

Although not reported, Justice Bliss held "Even though the complaining taxpayer be relieved from the burden of overcoming the presumption that the assessors valuation is correct, he nevertheless **has the statutory burden of proof establishing his contention that the valuation is excessive, inadequate, or inequitable.**" *Clark v. Lucas County Board of Review*, 242 Iowa 80, 96, 44 N.W.2d 748, 757 (1950), citing Sec 441.13, Code 1950, I.C.A.. The Iowa Court then went on to interpret the statutory burden as requiring the taxpayer to produce evidence that the valuation was "grossly excessive" and the result of what would amount in Nebraska to an illegal act. This conclusion formed the basis of the Nebraska Supreme Court holding.

II.

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

The Commission is required to affirm the decision of County unless evidence is adduced which establishes that the action of County was unreasonable or arbitrary. *See* Neb. Rev. Stat. §77-1511 (Reissue 1996). The only evidence before the Commission consists of the information provided by Taxpayers. The Commission, in determining the case, 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. *See* Neb. Rev. Stat. §77-5016(3) (Reissue 1996). The uncontroverted evidence establishes that the decision of County was arbitrary and unreasonable. The Commission must, therefore, and hereby does conclude as a matter of law that the decision of the Saunders County Board of Equalization in setting the assessed valuation of Taxpayers' agricultural land and improvements at \$101,845, was unreasonable and arbitrary and must be reversed.

ORDER

IT IS, THEREFORE, ORDERED as follows:

- I. That the decision of the Saunders County Board of Equalization is reversed.

II. That the assessed value of the subject property, for tax year 1996, be shown as follows:

Land	\$ 65,000	Property Tax
Improvements	\$ 27,945	
Total	\$ 92,945	

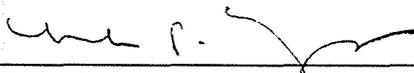
III. That this decision, if no appeal is filed, shall be certified within thirty days to the Saunders County Treasurer, and the Saunders County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).

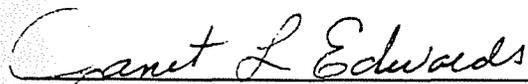
IV. That each party bear its own costs.

IT IS SO ORDERED.

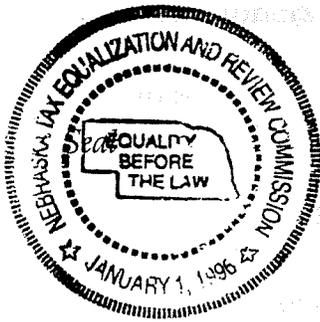
Dated this 18th day of February, 1996.

Filed February 18, 1996


Mark P. Reynolds, Chairman


Janet L. Edwards, Commissioner


Robert L. Hans, Commissioner



NATURE OF THE
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