

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

JERRY L. HORSTMAN,)	
)	
Appellant,)	CASE NO. 04C-170
)	
vs.)	FINDINGS AND ORDER
)	AFFIRMING THE DECISION OF THE
JOHNSON COUNTY BOARD OF)	JOHNSON COUNTY BOARD OF
EQUALIZATION,)	EQUALIZATION
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Jerry L. Horstman to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on June 28, 2005, pursuant to a Notice and Order for Hearing issued March 1, 2005. Commissioners Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Jerry L. Horstman ("the Taxpayer") appeared at the hearing without counsel.

The Johnson County Board of Equalization ("the County Board") appeared through counsel, Julie D. Smith, Esq., a Deputy County Attorney for Johnson County, Nebraska.

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Reissue 2003, as amended by 2005 Neb. Laws L.B. 15 §10) to state its final decision concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case is as follows.

I.
STANDARD OF REVIEW

The Taxpayer, in order to prevail, is required to demonstrate that the decision of the County Board was incorrect and arbitrary or unreasonable. Neb. Rev. Stat. §77-5016(8)(Cum. Supp. 2004, as amended by 2005 Neb. Laws L.B. 15 §9). The presumption created by the statute can be overcome if the Taxpayer shows by clear and convincing evidence that the County Board either failed to faithfully perform its official duties or that the County Board failed to act upon sufficient competent evidence in making its decision. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). It is the Taxpayer's burden to overcome the presumption with clear and convincing evidence of more than a difference of opinion. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the value as determined by the County Board was unreasonable. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

II.
FINDINGS

The Commission finds and determines that:

A.
PROCEDURAL FINDINGS

1. The Taxpayer is the owner of record of certain real property described in the appeal as Lots 1, 2, 3, 4, and 5 and N½ of the vacated alley South of lots and adjacent vacated 10th

Street, Block 55, Original Town, Tecumseh, Johnson County, Nebraska (“the subject property”).

2. The actual or fair market value of the subject property, placed on the assessment roll as of January 1, 2004, ("the assessment date") by the Johnson County Assessor was:

Land value	\$ 7,200.00
Improvement value	<u>\$17,950.00</u>
Total value	<u>\$25,150.00.</u>

3. The Taxpayer timely protested that value to the County Board. The Taxpayer proposed the following value for the subject property:

Land value	\$ 7,200.00
Improvement value	<u>\$11,240.80</u>
Total value	<u>\$18,440.80.</u>

4. The County Board denied the protest. (E:1)
5. The Taxpayer timely filed an appeal of that decision to the Commission.
6. The County Board was served with a Notice in Lieu of Summons, and duly answered that Notice.
7. A Notice and Order for Hearing issued on March 1, 2005, set a hearing of the Taxpayer's appeal for June 28, 2005, at 9:00 a.m. CDST.
8. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Notice and Order for Hearing was served on all parties.

B.
SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The subject property is a six lot mobile home park with four individual storage sheds.
2. The Taxpayer has not adduced sufficient, clear and convincing evidence to overcome the statutory presumption in favor of the County Board.
3. Based on the entire record before it, the Commission finds and determines that the actual or fair market value of the subject property for the tax year 2004 is:

Land value	\$ 7,200.00
Improvement value	<u>\$17,950.00</u>
Total value	<u>\$25,150.00.</u>

4. The value of the subject property as of the assessment date determined by the County Board is supported by the evidence.
5. The decision of the County Board was correct and neither arbitrary nor unreasonable.
6. The decision of the County Board should be affirmed.

III.
CONCLUSIONS OF LAW

1. Subject matter jurisdiction of the Commission is over all issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998)
2. The Commission has jurisdiction over the parties and the subject matter of this appeal.
3. The Commission, while making a decision, may not consider testimony, records, documents or other evidence which is not a part of the hearing record except those

- identified in the Commission's rules and regulations or Section 77-5016 (3). Neb. Rev. Stat. §77-5016(3) (Cum. Supp 2004, as amended by 2005 Neb. Laws L.B. 15 §9).
4. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004).
 5. "Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued." Neb. Rev. Stat. §77-112 (Reissue 2003).
 6. Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Neb. Rev. Stat. §77-112 (Reissue 2003).
 7. "Actual value, market value, and fair market value mean exactly the same thing."
Omaha Country Club V. Douglas County Board of Equalization et al., 11 Neb.App. 171, 180, 645 N.W.2d 821, 8241 (2002).
 8. The Taxpayer must adduce evidence establishing that the action of the County Board was incorrect and unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp 2004, as amended by 2005 Neb. Laws L.B. 15 §9). The Nebraska Supreme Court, in considering similar language, has held that "There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has

acted upon sufficient competent evidence to justify its action. That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence on appeal to the contrary. From that point on, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.” *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523, (2001).

9. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736, (2000).
10. The term "unreasonable" can be applied to a decision of an administrative agency only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447, (1999).
11. The Court has also held that “In an appeal to the county board of equalization or to [the Tax Equalization and Review Commission] and from the [Commission] 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.” *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523, (2001).

12. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).
13. "It is the function of the county board of equalization to determine the actual value of locally assessed property for tax purposes. In carrying out this function, the county board must give effect to the constitutional requirement that taxes be levied uniformly and proportionately upon all taxable property in the county. Individual discrepancies and inequalities within the county must be corrected and equalized by the county board of equalization." *AT & T Information Systems, Inc. v. State Bd. of Equalization and Assessment*, 237 Neb. 591, 595, 467 N.W.2d 55, 58, (1991).
14. "An owner who is familiar with his property and knows its worth is permitted to testify as to its value." *U. S. Ecology v. Boyd County Bd. Of Equalization*, 256 Neb. 7, 16, 588 N.W.2d 575, 581, (1999).
15. The appraisal of real estate is not an exact science. *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874, (1977).
16. Cost of construction or costs of acquisition may be evidence of actual value but are not conclusive evidence of actual value. *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

IV. ANALYSIS

The subject property was developed by the Taxpayer. The Taxpayer testified that his cost of development was \$17,461.00 for a sewer line, water tap, water line, and electrical pedestal.

Taxable value of the improvements as determined by the Board expressed as a cost per space together with the actual value of four individual storage sheds were challenged by the Taxpayer. The Taxpayer asserted in his protest to the Board that the mobile home utility spaces should be valued at their cost of \$1,806.80 each and that the shed should be valued at \$100.00, the value given to storage shed of similar or better quality.

The Taxpayer's calculated value per space in the mobile home park did not include the full cost of the sewer line because its presence could benefit other property. The evidence is, however that the Taxpayer paid the entire cost of installing the sewer line to benefit the subject property and that no contribution can be compelled from any other property owner. To the extent cost is evidence of value, the entire cost of the sewer line has to be considered. The cost per space with consideration of the full cost of the sewer line is \$2,431.80. The value assigned to each space by the County Assessor was \$2,236.00. The Assessor determined the value of each space by reference to the Marshall and Swift Cost manual and application of 2% physical depreciation and 35% economic depreciation to the improvements. (E12:1 and E11:2). Economic or external obsolescence (depreciation) can be defined "as a cause of depreciation that is a loss of value as a result of impairment in utility or desirability caused by factors outside the property's boundaries". *Glossary for Property Appraisal and Assessment*, IAAO , p48 ,(1997) The Assessor testified that 35% economic depreciation was necessary because the area in which the subject property is located is economically depressed. The Taxpayer testified and produced exhibits concerning the valuation of mobile home spaces in neighboring counties. That evidence may not have pertained to the 2004 tax year. In addition information necessary to determine

whether the mobile home spaces in other counties were comparable such as age and type of construction was not produced.

The Taxpayer testified that he paid \$399.00 each for two of the storage sheds on the subject property and that each had a floor containing approximately one yard of concrete. The Taxpayer testified that the cost of the concrete would be approximately \$75.00. Total cost of each shed and its floor was approximately \$475.00. The Assessor had determined that the cost of each shed was \$560.00 (E:12). That cost was adjusted for 2% and 1% physical depreciation to \$550.00. (E12). The cost of \$550.00 was further adjusted by 35% for economic depreciation resulting in a depreciated value of \$375.50. The Taxpayer produced exhibits concerning two storage sheds in Tecumseh. (E2:3 and E3:3). Each shed was valued for tax purposes at \$100.00. (E2:2 and E3:2). The Taxpayer's sheds have metal frames and plastic exterior walls and roofs. Construction of the comparables appear to be different. The Taxpayer's sheds are new. Ages of the sheds offered as comparables are unknown. The Taxpayer's sheds are located on commercial property. The sheds offered as comparables appear to be placed in a residential setting. The Assessor testified that small storage sheds located at a trailer park have greater utility than a similar shed at another type of residence due to demand for storage in a mobile home park. The sheds proposed as comparable by the Taxpayer were not comparable to the sheds on the subject property.

If relief is to be granted based on a lack of equalization it is necessary for the Taxpayer to prove the actual value of comparable property with its taxable value on the same date and the actual value of a subject property with its taxable value on that same date. *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626

(1984). If the ratios of taxable value to actual value are equal the subject and the comparable have equalized values. As noted above the Taxpayer has failed to prove actual value for the subject property was different than the value determined by the Board. The ratio of taxable value to actual value for the subject property, based on the evidence is 100%. That is the ratio required by law. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004). The ratio of taxable value to actual value was not proven for a comparable property. The Commission lacks clear and convincing evidence upon which to grant relief on the Taxpayer's equalization claim.

For reasons stated the Commission does not find that the Taxpayer presented clear and convincing evidence that the taxable value adopted by the Board was unreasonable or that taxable values were not equalized.

V. ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the decision of the County Board determining the actual or fair market value of the subject property as of the assessment date, January 1, 2004, as follows:

Land value	\$ 7,200.00
Improvement value	<u>\$17,950.00</u>
Total value	<u>\$25,150.00</u>

is affirmed.

2. That this decision, if no appeal is timely filed, shall be certified to the Johnson County Treasurer, and the Johnson County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2003).
3. That any request for relief, by any party, which is not specifically provided for by this order is denied.
4. That each party is to bear its own costs in this matter.
5. That this decision shall only be applicable to tax year 2004.
6. This order is effective for purposes of appeal July 5, 2005.

Signed and Sealed. July 5, 2005.

Wm. R. Wickersham, Chairperson

Susan S. Lore, Commissioner

Robert L. Hans, Commissioner

SEAL

ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW CONTAINED IN NEB. REV. STAT. §77-5019 (REISSUE 2003 AS AMENDED BY 2005 NEB. LAWS L.B. 15 §11). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.