

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

RICHARD D. HELVEY,)	
)	
Appellant,)	CASE NO. 04R-128
)	
vs.)	FINDINGS AND ORDER
)	AFFIRMING THE DECISION OF THE
DAWSON COUNTY BOARD OF)	DAWSON COUNTY BOARD OF
EQUALIZATION,)	EQUALIZATION
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Richard D. Helvey to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Hampton Inn, 200 Platte Oasis Parkway, in the City of North Platte, Lincoln County Nebraska, on June 22, 2005, pursuant to a Notice and Order for Hearing issued February 8, 2005. Commissioners Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Richard D. Helvey ("the Taxpayer") appeared at the hearing without counsel.

The Dawson County Board of Equalization ("the County Board") appeared through counsel, Kurt R. McBride, Esq., Chief Deputy County Attorney for Dawson 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 Lot 11, Block 1, Indian Heights Third Addition to the City of Lexington, Dawson

County, Nebraska a/k/a 401 Cherokee Road, Lexington, 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 Dawson County Assessor was:

Land value	\$ 21,600.00
Improvement value	<u>\$127,696.00</u>
Total value	<u>\$149,296.00.</u> (E19:1).

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

Land value	\$ 21,600.00
Improvement value	<u>\$87,600.00</u>
Total value	<u>\$109,200.00.</u> (E:1).

4. The County Board determined that the actual or fair market value of the subject property as of the assessment date was:

Land value	\$ 21,600.00
Improvement value	<u>\$113,248.00</u>
Total value	<u>\$134,848.00.</u> (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 February 8, 2005, set a hearing of the Taxpayer's appeal for June 22, 2005, at 10:00 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 improved with a 2½ story single family residence containing 2,408 square feet home with porches, a fireplace, and a detached garage. (E6).
2. The Taxpayer testified that the home was built in 1978.
3. The Taxpayer has not adduced sufficient, clear and convincing evidence to overcome the statutory presumption in favor of the County Board.
4. 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	\$ 21,600.00
Improvement value	<u>\$113,248.00</u>
Total value	<u>\$134,848.00.</u>

5. The value of the subject property as of the assessment date determined by the County Board is supported by the evidence.
6. The decision of the County Board was correct and neither arbitrary nor unreasonable.
7. 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.”
Richards v. Board of Equalization, 178 Neb. 537, 540, 134 N.W.2d 56, 58 (1965).
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. “It is well established that the value of the opinion of an expert witness is no stronger than the facts upon which it is based.” *Bottorf v. Clay County Bd. Of Equalization*, 7 Neb. App. 162, 167, 580 N.W.2d 561, 565, (1998).

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. That a Taxpayer, who offered no evidence that the subject property was valued in excess of its actual value and who only produced evidence that was aimed at discrediting valuation methods utilized by county assessor, failed to meet burden of proving that value of her property was not fairly and proportionately equalized or that valuation placed upon her property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).
17. "Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that no one part is compelled to pay a disproportionate share of the tax. Where it is impossible to secure both the standards of the true value of a property for taxation and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. However, the burden is on the taxpayer to show by clear and convincing evidence that the valuation placed upon the taxpayer's property when compared with valuation placed on other similar property is grossly excessive." *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).
18. Where "the discrepancy was not the result of an error of judgment but was a deliberate and intentional discrimination systematically applied" the Taxpayer's right to relief is

clear. “The right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.” *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984).

IV. ANALYSIS

The Taxpayer alleged in his protest to the County Board of Equalization and in his appeal to the Commission that taxable value of the subject property for the year 2004, was determined arbitrarily and capriciously. (E1 & E2). Records obtained from the County Assessor support that conclusion if just the percentage of depreciation assigned from year to year is examined. (E6:6&7). The Assessors records indicate that the cost approach employing cost factors furnished by Marshall and Swift was used to value the subject property for tax year 2004. (E6:7). The County had, however, employed a contract appraiser to determine taxable value of the subject property for the year 2004. An employee of the contract appraiser testified that the method used to value the subject property was not the cost method as disclosed on the Assessor’s records. The method described by the employee of the contract appraiser was a “kind of” computerized multiple regression analysis model based on the characteristics of sold homes and their selling prices. To develop the model it was necessary to determine the various characteristics of sold homes such as size, style, type of construction, quality of construction,

condition, age and amenities such as fireplaces, or decks. That information was analyzed with a computer program and applied to derive a value per square foot for each home in the city of Lexington. After a value based on the square feet in a home was determined, the Micro Solve CAMA system data was adjusted (in the examples seen by the Commission changes were made to depreciation including negative depreciation) so that the value resulting from application of that Micro Solve CAMA program matched as closely as possible the value determined by the value per square foot program. The Assessor's worksheet with a change to depreciation supports the value placed on the property record card. The change to depreciation can only be explained, however, by reference to a process for which supporting data was not made available.

The Taxpayer presented evidence of the taxable value for a home across the street from the subject property. (E8). The bi-level home on that property was built in 1978. The home is 1,736 square feet with a 1,060 square feet partition finished basement, a built in garage, and a detached garage. (E8:6). The Taxpayer testified that he was familiar with the home and that it had been updated and had better maintenance than the subject property. The quality of the home was rated Average and the condition Avg/Good. The subject property is larger (2,408 square feet) and has a different style (2 ½ story) but does not have a basement. The subject property has a quality rating of Avg/Good and a condition rating of Avg/Good. The subject property was assigned a per square foot value by the assessor of \$62.00 per square foot ($62 \times 2,408 = \$149,296.00$). (E6:7). That value was reduced by the County Board to approximately \$56.00 per square foot. ($13,5195 \div 2,408 = \56.14). The house across the street was valued at \$73.00 per square feet. ($\$126,728 \div 1736 = \73.00). (E8). While the evidence demonstrates that these two houses have different values per square foot they are not comparable properties. The Taxpayer

offered no opinion of the actual or fair market value of the subject property. The Taxpayer failed to adduce clear and convincing evidence of the actual or fair market value of the subject property. The value as determined by the Board must therefore stand.

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 an actual value for the subject property 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 to taxable value to actual value was not proven for a comparable property. The Nebraska Supreme Court has held that a Taxpayer, who offered no evidence of value and who only produced evidence that was aimed at discrediting valuation methods utilized by county assessor, failed to meet burden of proving that value of her property was not fairly and proportionately equalized or that valuation placed upon her property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983). The Commission lacks clear and convincing evidence upon which to grant relief on the Taxpayer's equalization claim.

**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	\$ 21,600.00
Improvement value	<u>\$113,248.00</u>
Total value	<u>\$134,848.00</u>

is affirmed.

2. That this decision, if no appeal is timely filed, shall be certified to the Dawson County Treasurer, and the Dawson 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.