

**NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

DALE F. MUSGRAVE,)	
)	
Appellant,)	CASE NO 05R-047
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE RED WILLOW
RED WILLOW COUNTY BOARD OF)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	
)	

The above-captioned case was called for a hearing on the merits of an appeal by Dale F. Musgrave to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Hampton Inn, 200 Platte Oasis Parkway, North Platte, Nebraska, Nebraska, on June 29, 2006, pursuant to a Notice and Order for Hearing issued March 8, 2006. Commissioners Wickersham, Warnes, and Lore were present. Commissioner Warnes presided at the hearing.

Dale F. Musgrave, ("Appellant") was present at the hearing without legal counsel.

The Red Willow County Board of Equalization ("Appellee") appeared through legal counsel, Philip P. Lyons, a Deputy County Attorney for Red Willow County, Nebraska.

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

The Commission is required by Neb. Rev. Stat. §77-5018 (Supp. 2005) to state its final decision and order 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.
FINDINGS**

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described as 7th Addition To McCook, Blk 10 Lot 2, Red Willow County, Nebraska, ("the subject property").
2. Taxable value of the subject property placed on the assessment roll as of January 1, 2005, ("the assessment date") by the Red Willow County Assessor, value as proposed by the Taxpayer in a timely protest, and taxable value as determined by the County Board is shown in the following table:

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Description: 7th Addition To McCook, Blk 10 Lot 2, Red Willow County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$4,900.00	\$2,500.00	\$4,900.00
Improvement	\$58,257.00	\$40,000.00	\$58,257.00
Total	\$63,157.00	\$42,500.00	\$63,157.00

3. The Taxpayer timely filed an appeal of the County Board's decision to the Commission.
4. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
5. An Order for Hearing and Notice of Hearing issued on March 8, 2006, set a hearing of the Taxpayer's appeal for June 29, 2006, at 10:00 a.m., CDST.
6. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.

7. For reasons stated below, the Taxpayer has not adduced sufficient, clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary, and the decision of the County Board should be affirmed.

8. Taxable value of the subject property for the tax year 2005 is:

Land value	\$4,900.00
Improvement value	<u>\$58,257.00</u>
Total value	<u>\$63,157.00.</u>

II. CONCLUSIONS OF LAW

1. Subject matter jurisdiction of the Commission in this appeal 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 to this appeal.
3. “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).

4. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Neb. Rev. Stat. §77-112 (Reissue 2003).
5. Use of all of the statutory factors for determination of actual value is not required. All that is required is use of the applicable factors. *First National Bank & Trust of Syracuse v. Otoe Cty.*, 233 Neb. 412, 445 N.W.2d 880 (1989).
6. “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, 829 (2002).
7. Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value. Neb. Rev. Stat. §77-131 (Reissue 2003).
8. All taxable real property, with the exception of qualified agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004).
9. The Taxpayer must establish by clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005) *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 621 N.W.2d, 523, (2001).

10. "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).
11. 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).
12. A decision is unreasonable 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).
13. "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).

III. DISCUSSION

The property subject of this appeal is a single family home located in McCook, Nebraska. The specifications of the land and improvements for this improved property may be found on E2:3 - 5.

The Appellant seemed to be the most concerned with the fact that the value of his property had increased for 2005 (\$63,157.00) 17.56% over the valuation for 2004 (\$53,674.00). This increase was \$9,483.00. In addition, he was concerned that the Appellee had valued his garage incorrectly.

Appellant was directed to E2:4 to see the valuation history for this property. The exhibit shows that the Appellee did not raise the valuation for 2004 from 2003. Appellant acknowledged that the Appellee had already made an adjustment to his valuation due to an earlier error in measurement of the garage.

Appellant indicated that his opinion of value for the subject property on January 1, 2005 was between \$53,000.00 and \$55,000.00. The value entered on his Protest Form to the Appellee, E 1:1, was \$42,500.00. The Appellant testified this figure was purely a guess.

Appellant did not provide his own comparable sales. He felt that the closest comparison to his property which was used by the Appellee is shown on E2:16 - 18. It was noted from the property file for this property that it had sold on August 29, 2002, for \$64,000.00. On E16:18, the cost approach indicated that its value per square foot is \$63.97. This property comparison did not assist Appellant in his case, but rather helped support the Appellee's valuation.

The Commission finds that the Appellant has not overcome the presumption of correctness in favor of the Appellee.

The Appellant has failed to meet its burden of showing that the Red Willow Board of Equalization was incorrect in valuing the subject property or that their valuation was unreasonable or arbitrary.

**V.
ORDER**

IT IS THEREFORE ORDERED THAT:

1. The decision of the Appellee Board determining taxable value of the subject property as of the assessment date, January 1, 2005, is affirmed.

2. Taxable value of the subject property for the tax year 2005 is:

Land value	\$4,900.00
Improvement value	<u>\$58,257.00</u>
Total value	<u>\$63,157.00.</u>

3. This decision, if no appeal is timely filed, shall be certified to the Red Willow Appellee Treasurer, and the Red Willow Appellee Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Supp. 2005).

4. Any request for relief, by any party, which is not specifically provided for by this order is denied.

5. Each party is to bear its own costs in this proceeding.

6. This decision shall only be applicable to tax year 2005.

7. This order is effective for purposes of appeal August 7, 2006.

Signed and Sealed. August 7, 2006.

Wm. R. Wickersham, Commissioner

Susan S. Lore, Commissioner

SEAL

William C. Warnes, Commissioner

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 (SUPP. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.