

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

BRENDA MILLER McGRUDER,)	
)	
Appellant,)	Case No 05R-361
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE DOUGLAS
DOUGLAS COUNTY BOARD OF)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	

**I.
STATEMENT OF FACTS**

The above-captioned case was called for a hearing on the merits of an appeal by Brenda Miller McGruder 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 November 17 , 2006, pursuant to a Notice and Order for Hearing issued September 11, 2006. Commissioners Wickersham, Warnes, and Hans were present. Commissioner Warnes presided at the hearing.

Brenda Miller McGruder ("the Taxpayer") was present at the hearing without legal counsel.

The Douglas County Board of Equalization ("the County Board") appeared through legal counsel, James R. Thibodeau, a Deputy County Attorney for Douglas County, Nebraska.

The Commission took statutory notice, received exhibits and heard testimony. The Case File was received into evidence without objection, Exhibits 1 to 5 were admitted into evidence without objection. Exhibit 6 was retrieved from an envelope in the Case File and each

of thirteen photos were marked as Exhibits 6:1 to 6:13. Exhibit 6 was received over an objection on relevancy made by the Appellee.

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.

II. ISSUES

The Taxpayer has asserted that actual value of the subject property as of January 1, 2005, is less than actual value as determined by the County Board. The issues on appeal related to that assertion are:

Was the decision of the County Board determining actual value of the subject property unreasonable or arbitrary?

What was actual value of the subject property on January 1, 2005?

III. FINDINGS OF FACT

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described as PARK PLACE LOT 24 BLOCK 3 3FT WEBSTER ST ADJ ON N & S 160 N 193 FT LT 23 & W 75 S 160 N 193 FT 110 X 163 & 75 X 163, OMAHA, Douglas County, Nebraska, ("the subject property").
2. Actual value of the subject property placed on the assessment roll as of January 1, 2005, ("the assessment date") by the Douglas County Assessor, value as proposed in a timely

protest, and actual value as determined by the County Board is shown in the following table:

PARK PLACE LOT 24 BLOCK 3 3FT WEBSTER ST ADJ ON N & S 160 N 193 FT LT 23 & W 75 S 160 N 193 FT 110 X 163 & 75 X 163, OMAHA, Douglas County, Nebraska

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$44,000.00	\$	\$44,000.00
Improvement	\$718,500.00	\$	\$718,500.00
Total	\$762,500.00	\$475,000.00	\$762,500.00

3. An appeal of the County Board's decision was filed with 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 September 11, 2006, set a hearing of the Taxpayer's appeal for November 17, 2006, at 1:00 p.m. CST.
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. (Case File).
7. Taxable value of the subject property as of the assessment date for tax year 2005 is:

Land Value	\$ 44,000.00
Improvement Value	<u>\$718,500.00</u>
Total Value	<u>\$762,500.00</u>

**IV.
APPLICABLE LAW**

1. “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).
2. 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).
3. 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).
4. “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).

5. 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).
6. 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).
7. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
8. The presumption that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
9. The presumption in favor of the county board may be classified as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions governing taxation. *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987) (citations omitted)

10. The Commission can grant relief only if the Taxpayer establishes by clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See. Neb. Rev. Stat. §77-5016 (8) (Supp. 2005).
11. "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).
12. 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).
13. 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).
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).

V. ANALYSIS

The subject property is located at 622 N. 38th St. in Omaha, Douglas County, Nebraska. The property consists of a 2 ½ story residence of masonry common brick (Exhibit 1:20). The house was constructed in 1918. It has 3,230 square feet on the first floor and 2,952 square feet on the second floor for a total living area of 6,182 square feet (Exhibit 1:22). In addition, the property includes a carriage house referred to as "Bldg #2" (Exhibit 1:23). The first floor of the

carriage house has 944 square feet of finished living area and the second floor had 400 square feet. A three car attached garage is connected to the lower level of the first floor (Exhibit 1:21).

The Taxpayer alleges that her house has not been properly assessed for taxation. In particular, Taxpayer alleges that taxable valuation of the subject property has been diminished by needed roof repairs to her residence and carriage house. Taxpayer testified that roof repair was started in November of 2001, and discontinued approximately one year later in November 2002. There had not been any roof repair work since that time. Exhibit 6 pages 1 to 13 are photos of the condition of the roof as of January 1, 2005. Similarly, the condition of the room on January 1, 2005, is also shown in photos in Exhibit 1 pages 62-63.

Taxpayer testified to a proposal for roof repair dated August 20, 2005. This proposal was from Tony's Roofing and was obtained after the Douglas County Board of Equalization's final order for valuation of the subject property. The proposal was included with the Taxpayer's appeal and was allowed into evidence as a part of the case file without objection. The proposal was not signed. The Commission also notes that the proposal is for a completely new roof with the installation of an exceptionally durable roof material. Taxpayer testified that repairs short of a completely new roof could have been made to her roof and it was possible existing tiles could have been recycled. A review of the Taxpayer's written, but unsigned proposal for roof repair shows installation of new tiles in contradiction to the Taxpayer's testimony that the old tile could be recycled and reinstalled. The Commission finds that this proposal for roof repair has low probative value.

There are two deficiencies in the record facing the Commission in its review of the evidence in this appeal.

First, the Taxpayer did not provide any comparable sales of like property nor did she provide property record files for any properties that might give evidence of the taxable value of her property. The use of sales of comparable properties and the providing of the property record files for those properties would give the Commission a base value of the subject property from which to start before making adjustments for the condition of the property and needed roof repair.

Taxpayer's opinion of taxable value for the subject property on January 1, 2005, is the county's assessed value of \$762,500 less her estimate for roof repairs of \$285,000 for an estimate of taxable value of \$477,500. The Taxpayers requested valuation is shown on Exhibit 1 page 2 of \$475,000. This value was placed by the Taxpayer on the mail-in protest for on June 29, 2005. The Commission notes that Taxpayer's estimate of value, shown on the protest form of June 29, 2005, deducted \$250,000 to \$300,000 (E1:2) from the County's assessed taxable value and was before an estimate of repair cost was made by Tony's repair which was dated August 20, 2005. The Commission finds that Taxpayer has not provided an accurate quantification of the reduction in value caused to the subject property as a result of the needed roof repairs. The Commission cannot speculate on what this reduction should be.

A second deficiency of Taxpayer's evidence that the reduction in taxable value of the subject property due to the needed roof repairs should be shown as an item of depreciation versus a simple deduction in value. The roof repair represents depreciation for physical depreciation. Physical deterioration and the method used to estimate depreciation is described in Chapter 154, *Appraising Residential Properties*, 3rd Edition, The Appraisal Institute. The

methods used to estimate depreciation can also be found in Chapter 16, *The Appraisal of Real Estate*, 12th Edition, The Appraisal Institute.

The Commission finds that the Taxpayer has not provided sufficient evidence of the taxable valuation of her property and relief cannot be granted. *See, Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W.2d 518 (2001)

**VI.
CONCLUSIONS OF LAW**

1. The Commission has subject matter jurisdiction in this appeal.
2. 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).
3. The Commission has jurisdiction over the parties to this appeal.

**VII.
ORDER**

IT IS THEREFORE ORDERED THAT:

1. The decision of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2005, is affirmed.
3. Taxable value of the subject property for the tax year 2005 is:

Land Value	\$ 44,000.00
Improvement Value	<u>\$718,500.00</u>
Total Value	<u><u>\$762,500.00</u></u>

3. This decision, if no appeal is timely filed, shall be certified to the Douglas County Treasurer, and the Douglas County 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 December 8, 2006.

Signed and Sealed. December 8, 2006.

Wm. R. Wickersham, Commissioner

William C. Warnes, Commissioner

SEAL

Commissioner Hans, concurring:

I concur with the result but I would find the County incorrectly classified the quality of the residence as Very Good. That classification is not correct and is sufficient to rebut the presumption in favor of the action of the County, the Taxpayer has adduced enough evidence, although not quantifiable, to logically dispute the County's value, but the Commission has no other value to affirm.

Robert L. Hans, 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.