

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

CHARLES R. CLATTERBUCK,)	
)	
Appellant,)	CASE NOs. 05R-105 and 05R-106
)	
vs.)	FINDINGS AND ORDER
)	AFFIRMING THE DECISIONS OF THE
CASS COUNTY BOARD OF)	CASS COUNTY BOARD OF
EQUALIZATION,)	EQUALIZATION
)	
Appellee.)	

The above-captioned cases were called for a hearing on the merits of appeals by Charles R. Clatterbuck 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 January 11, 2006, pursuant to a Notice and Order for Hearing issued October 27, 2005. Commissioners Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Charles R. Clatterbuck ("the Taxpayer") appeared at the hearing without counsel.

The Cass County Board of Equalization ("the County Board") appeared through counsel, Nathan B. Cox, Esq., the County Attorney for Cass County, Nebraska.

The Commission took statutory notice, reformed the contents of its case files without objection, 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. 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)(Supp. 2005). 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:

1. The Taxpayer is the owner of record of certain real property described in the appeals files as Iron Horse Lot 93, the subject of the appeal in Case No 05R-105, ("Parcel A") and Iron Horse Lot 128, the subject of the appeal in Case No 05R-106, ("Parcel B"), Cass County, Nebraska ("the subject property").

2. The taxable value of each parcel of the subject property described in the appeals, placed on the assessment roll as of January 1, 2005, ("the assessment date") by the Cass County Assessor was:

Parcel A

Land value	\$104,950.00
Improvement value	\$ <u> -0-</u>
Total value	<u>\$104,950.00</u>

Parcel B

Land value	\$104,950.00
Improvement value	\$ <u> -0-</u>
Total value	<u>\$104,950.00.</u>

3. The Taxpayer timely protested those values to the County Board. The Taxpayer proposed the following values for each parcel of the subject property described in the appeals:

Parcel A

Land value	\$49,975.00
Improvement value	\$ <u> -0-</u>
Total value	<u>\$49,975.00</u>

Parcel B

Land value	\$49,975.00
Improvement value	\$ <u> -0-</u>
Total value	<u>\$49,975.00.</u>

4. The County Board denied the protests. (E:1)

5. The Taxpayer timely filed appeals of those decisions to the Commission.
6. The County Board was served with Notices in Lieu of Summons, and duly answered those Notices.
7. The Taxpayer's appeals were consolidated for hearing by order of the Commission.
8. An Order for Hearing and Notice of Hearing issued on October 27, 2005, set a hearing of the Taxpayer's appeals for July 11, 2006, at 1:00 p.m. CST.
9. 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.
10. The Taxpayer has not adduced sufficient, clear and convincing evidence to overcome the statutory presumption in favor of the County Board.
11. Based on the entire record before it, the Commission finds and determines that the taxable value of each parcel of the subject property described in the case files for the tax year 2005 is as follows

Parcel A

Land value	\$104,950.00
Improvement value	\$ <u> -0-</u>
Total value	<u>\$104,950.00</u>

Parcel B

Land value	\$104,950.00
Improvement value	\$ <u> -0-</u>
Total value	<u>\$104,950.00.</u>

12. The taxable values of the subject property as of the assessment date determined by the County Board are supported by the evidence.
13. The decisions of the County Board were correct and neither arbitrary nor unreasonable.
14. The decisions 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) (Supp 2005).
4. 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) (Supp. 2005). 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).

5. 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).
6. 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).
7. 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).
8. "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).

9. “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).
10. “Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.” *Neb. Const.*, art. VIII, §1
11. Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value. *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).
12. The constitutional requirement of uniformity in taxation extends to both rate and valuation. *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).
13. “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).

14. Equalization requires a comparison of the ratio of assessed to actual value for the subject property and comparable property. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).
15. “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. DISCUSSION

On the assessment date the parcels comprising the subject property were unimproved lots. The Taxpayer asserts that the subject property’s taxable value should be equalized for the tax year 2005 with other unimproved lots in the Iron Horse development. It is necessary to

determine both whether there are grounds for relief and whether there is sufficient evidence to determine the relief to be granted. *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984).

The basis for the Taxpayers' equalization claim is based on a claim that disparate taxable values assigned to comparable unimproved lots in the Iron Horse development based on whether they were owned by the developer or another owner. Taxes are to be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution. *Neb. Const.* art. VIII §1.

Several principles of uniformity clause jurisprudence guide analysis of the clause. While absolute uniformity of approach for taxation may not be possible, there must be a reasonable attempt at uniformity. *County of Sarpy v. State Board of Equalization & Assessment*, 185 Neb. 760, 178 N.W.2d 765 (1970). "The object of the uniformity clause is accomplished "if all of the property within the taxing jurisdiction is assessed and taxed at a uniform standard of value." *County of Gage v. State Board of Equalization & Assessment*, 185 Neb. 749, 755, 178 N.W.2d 759, 764 (1970). Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value. *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987). The constitutional requirement of uniformity in taxation extends to both rate and valuation. *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964). In the instant case, the Taxpayer is contesting the valuation method applied to unimproved residential property.

The rules as to uniformity and equal protection of the laws apply to valuation by the assessing officers. The Taxpayer is entitled to the benefit of a valuation practice that the County applied to other comparable property. *Constructors, Inc v. Cass County Board of Equalization*, 228 Neb. 866, 606N.W.2d 786 (2000). The Taxpayer testified that unimproved lots owned by Iron Horse Development LLC, the developer of the Iron Horse subdivision, were valued utilizing a developer's discount to determine taxable value as of January 1, 2005. The Taxpayer also testified that both parcels of the subject property were unimproved and that the subject property had not received the benefit of a developer's discount in the determination of taxable value as of January 1, 2005. The Taxpayer did not, however, offer any evidence concerning the taxable value as of January 1, 2005, for any lot for which the taxable value was determined utilizing a developer's discount. As noted above it is necessary to not only show that relief may be granted but the to show also the relief to be granted. The Taxpayer has failed to show the relief to be granted and relief cannot be granted.

**V.
ORDER**

IT IS THEREFORE ORDERED:

1. That the decisions of the County Board determining the taxable value of each parcel of the subject property described in the appeals as of the assessment date, January 1, 2005, as follows:

Parcel A

Land value	\$104,950.00
Improvement value	\$ <u>-0-</u>
Total value	<u>\$104,950.00.</u> and

Parcel B

Land value	\$104,950.00
Improvement value	\$ <u>-0-</u>
Total value	<u>\$104,950.00.</u>

are affirmed.

2. That this decision, if no appeal is timely filed, shall be certified to the Cass County Treasurer, and the Cass County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Supp. 2005).
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 2005.

6. This order is effective for purposes of appeal January 19, 2006.

Signed and Sealed. January 19, 2006.

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