

**NEBRASKA TAX EQUALIZATION  
AND REVIEW COMMISSION**

RYAN T. O'HARE,	)	
	)	
Appellant,	)	CASE NO 05R-067
	)	
v.	)	DECISION AND ORDER REVERSING
	)	THE DECISION OF THE DAWSON
DAWSON 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 Ryan T. O'Hare to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Hampton Inn, 200 Platte Oasis Parkway, North Platte, Nebraska, on June 30, 2006, pursuant to a Notice and Order for Hearing issued March 8, 2006. Commissioners Wickersham, Warnes, and Lore were present. Commissioner Wickersham presided at the hearing.

Ryan T. O'Hare, ("the Taxpayer") was present at the hearing without legal counsel.

The Dawson County Board of Equalization ("the County Board") appeared through legal counsel, Kurt R. McBride, 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 (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 a 4.59 acre tract lying South and West of Thirty Mile Canal in Section 24, Township 10, Range 25, Dawson 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 Dawson 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: A 4.59 acre tract lying South and West of Thirty Mile Canal in Section 24, Township 10, Range 25, Dawson County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 14,488.00	\$ 14,488.00	\$ 14,488.00
Improvement	\$252,100.00	\$210,512.00	\$252,100.00
Total	\$266,588.00	\$225,000.00	\$266,588.00

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 30, 2006, at 8:00 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 adduced sufficient, clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary, taxable value

as determined by the County Board is unreasonable or arbitrary, and the decision of the County Board should be vacated and reversed.

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

Land value	\$ 14,488.00
Improvement value	<u>\$227,202.00</u>
Total value	<u>\$241,690.00.</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. 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).
10. 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).

11. 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)
12. 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 (7) (Supp. 2005).
13. "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).
14. 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).
15. 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).

16. “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 subject property is an improved rural residential parcel. Improvements on the parcel are a detached garage and a 2,514 square foot rustic log residence with a loft and full basement. (E3:6).

The Taxpayer purchased the subject property in November 2004, for \$225,000.00. (E3:1). An appraisal was received in which an appraiser offered an opinion that market value of the subject property as of November 5, 2004 was \$230,000.00. (E7:2). The appraiser did not appear. The County Assessor testified that two of the homes described as comparables in the appraisal of November 5, 2004, were not comparable to the subject property. The Taxpayer testified that the subject property had been on the market about a year prior to its sale and was being sold as part of proceedings for dissolution of a marriage. The Taxpayer testified that all sale proceeds were retained by a bank in satisfaction of a lien. The evidence is that the sale and purchase of the subject property in November 2004 was not an arms length transaction. The Commission could not determine that neither the appraisal offered as Exhibit 7 or the purchase price were clear and convincing evidence of actual value as of the assessment date. It is immaterial that the sale occurred after June 30, 2004, the cutoff date for preparation of a sales roster used to evaluate the overall level of assessment for all real property in the County. It is clear that a sale even after the assessment date can be considered. *See H/K Company v. Board*

*of Equalization of the County of Lancaster*, 175 Neb. 268, 121 N.W.2d 382 (1963). The third comparable in that appraisal indicates a higher market value than estimated by the appraiser.

The County Board also offered comparables in support of its determination. Information concerning the parcels offered by the County Board was based on 2006 assessments and is not useful as an indicator of value for the tax year 2005.

Taxable value for the subject property was determined for tax year 2005 utilizing the cost approach. (E3:8). The Cost Approach includes six steps: “(1) Estimate the land (site) value as if vacant and available for development to its highest and best use; (2) Estimate the total cost new of the improvements as of the appraisal date, including direct costs, indirect costs, and entrepreneurial profit from market analysis; (3) Estimate the total amount of accrued depreciation attributable to physical deterioration, functional obsolescence, and external (economic) obsolescence; (5) Subtract the total amount of accrued depreciation from the total cost new of the primary improvements to arrive at the depreciated cost of improvements; (5) Estimate the total cost new of any accessory improvements and site improvements, then estimate and deduct all accrued depreciation from the total cost new of these improvements; (6) Add site value to the depreciated cost of the primary improvements, accessory improvements, and site improvements, to arrive at a value indication by the cost approach.” *Property Assessment Valuation*, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, pp. 128 - 129.

“Physical deterioration is the loss in value due to wear and tear in service and the disintegration of an improvement from the forces of nature. All man made objects begin a slow process of deterioration as soon as they are created. . . Among the most common causes of physical deterioration are wear and tear through use, breakage, negligent care, infestation of termites, dry

rot, moisture, and the elements. *Property Assessment Valuation*, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, pp. 154.

Value of the land component at \$14,488.00 was not disputed. (E1:1)

The Taxpayer testified that at the time of purchase the improvements were subject to deferred maintenance. Specifically the Taxpayer testified that the decks and exterior walls were in need of repair due to hail damage. Repair of the decks included resurfacing and replacement of boards. Repair of the residence included sanding the exterior and applying a new sealant. Physical depreciation deducted from replacement cost new for the year 2005 prior to repairs made by the Taxpayer was 18% . (E3:8). The County Assessor testified that depreciation for the tax year 2005 was determined based on a condition of Average/good. The County Assessor also testified that he changed the condition to average after a personal inspection of the subject property in 2006. Physical depreciation for the tax year 2006 was 26%. The County Assessor testified that a new deprecation table had been implemented for the tax year 2006. The new depreciation table was not material since the change in depreciation assigned to the subject property was largely due to the change in condition rating. The evidence is therefore that the condition of the residence prior to work performed by the Taxpayer was average or worse and the proper amount of depreciation for the tax year 2005 was at least 26% based on a condition of average. Replacement cost new as calculated for the tax year 2005 was \$307,030.00. (E3:8). The proper amount of physical depreciation to be taken at 26% is \$79,828 ( $\$307,030.00 \times .26 = \$79,827.8$ ). The replacement cost new less depreciation is therefore \$227,202 ( $\$307,030 - \$79,828 = \$227,202$ ). After adding the value of the land taxable value of the subject property for the tax year 2005 is \$241,690.00 ( $\$227,202 + \$14,488$ ).



**V.  
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 vacated and reversed.

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

Land value           \$ 14,488.00

Improvement value \$227,202.00

Total value           \$241,690.00.

3. 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 (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 July 13, 2006.

**Signed and Sealed.** July 13, 2006.

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Wm. R. Wickersham, Commissioner

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Susan S. Lore, Commissioner

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William C. Warnes, 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.**