

**NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

ROGER L. RUPP, TRUSTEE, ROGER L.)	
RUPP REVOCABLE TRUST,)	
)	CASE NO 05R-140
Appellant,)	
)	DECISION AND ORDER AFFIRMING
v.)	THE DECISION OF THE DAWSON
)	COUNTY BOARD OF EQUALIZATION
DAWSON COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Roger L. Rupp, Trustee, Roger L. Rupp Revocable Trust 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.

Roger L. Rupp, Trustee of Roger L. Rupp Revocable Trust, ("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, a 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 (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 Lot 27, North Shore, Johnson Lake, 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: Lot 27, North Shore, Johnson Lake, Dawson County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 50,000.00	\$Include Leasehold in Total	\$ 50,000.00
Improvement	\$130,000.00	\$Include Improvement in Total	\$130,000.00
Total	\$180,000.00	\$180,000.00	\$180,000.00

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 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	\$ 50,000.00
Improvement value	<u>\$130,000.00</u>
Total value	<u>\$180,000.00.</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 in this appeal is located on Johnson Lake in Dawson County and has two components which are improvements on leased land and the leasehold interest. The leased fee is held by Central Public Power and Irrigation District. (E5). Assessment of subject property is determined by Neb. Rev. Stat. §77-1374 (Revised Reissue 2003). The Taxpayer testified that the total taxable value determined by the County Board was correct as of the assessment date. The Taxpayer testified that the total taxable value should, however, be reallocated so that the value assigned to the leasehold interest was lower and the value assigned to the improvements higher.

The Taxpayer testified that the determination of the County Board was incorrect because values assigned to various leasehold interests at Johnson Lake did not vary by either feet of lake front footage or total square feet in the leasehold. The Taxpayer further testified that in his opinion the County Assessor’s methodology benefitted large lot owners and was detrimental to smaller lot owners because the per square foot value of a large lot would be less in comparison of the per square foot value of a smaller lot. The County Assessor testified that it

was difficult to determine the value of leasehold interests because of limited sales and that the few sales available for analysis did not support valuation adjustments for total square feet or lake front footage. The Taxpayer produced no evidence which would allow the Commission to make adjustments to value based on either total square feet in the leasehold or the lake front footage. Without evidence on which to base adjustments, it is impossible to make them even if the rationale for making an adjustment is compelling. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981).

The Taxpayer's assertion in this case is that one component of total value, the lease hold, should be adjusted without alteration of total taxable value. For purposes of assessment, the only issue which the Commission can address in this case is total taxable value. *Bumgarner v. Valley County*, 208 Neb. 361, 366 - 367, 303 N.W.2d 307,311 (1981).

The Taxpayer testified that he was concerned that values determined by the Assessor for the leasehold component of the subject property would be used by the Lessor to determine the value on which lease payments will be based in the future. Even if the Taxpayer is correct, the only issue over which the Commission has jurisdiction is actual value as of the assessment date.

The Commission is unable, for reasons stated above, to determine that the decision of the County Board of Equalization as of the assessment date was unreasonable or arbitrary.

**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 affirmed.

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

Land value \$ 50,000.00

Improvement value \$130,000.00

Total value \$180,000.00.

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 18, 2006.

Signed and Sealed. July 18, 2006.

Wm. R. Wickersham, Commissioner

Susan S. Lore, Commissioner

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.