

**NEBRASKA TAX EQUALIZATION  
AND REVIEW COMMISSION**

TIBBETTS BROS. INC.,	)	
	)	
Appellant,	)	CASE NO 05C-214
	)	
v.	)	DECISION AND ORDER AFFIRMING
	)	THE DECISION OF THE FRANKLIN
FRANKLIN 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 Tibbetts Bros. Inc., doing business as the Hutchins Funeral Home, to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the conference room of the Holiday Inn Express, the City of Kearney, Buffalo County, Nebraska, on June 1, 2006, pursuant to a Notice and Order for Hearing issued February 13, 2006. Commissioners Warnes, Lore, and Hans were present. Commissioner Warnes presided at the hearing.

Kenneth R. Fischer, Chairman of the Board was present at the hearing on behalf of Tibbetts Bros. Inc. ("the Taxpayer"), with Julie A.Effenbeck as legal counsel.

The Franklin County Board of Equalization ("the County Board") appeared through legal counsel, Patrick A. Duncan, County Attorney for Franklin 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 Lots 7 - 9; Blk. 11, People's Addition Fr. Bloomington , Franklin 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 Franklin 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: Lots 7 - 9; Blk. 11, People's Addition Fr. Bloomington , Franklin County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 3,890.00	\$ 3,890.00	\$ 3,890.00
Improvement	\$137,895.00	\$ 75,460.00	\$ 94,595.00
Total	\$141,785.00	\$ 79,350.00	\$ 98,485.00

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 February 13, 2006, set a hearing of the Taxpayer's appeal for June 1, 2006, at 2:00 p.m..

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	\$ 3,890.00
Improvement value	<u>\$ 90,700.00</u>
Total value	<u>\$ 94,590.00.</u>

( See Discussion for reason the valuation ordered by the County Board of Equalization was lowered. )

## **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. A corporate officer or other representative of an entity, must be shown to be familiar with the property in question and have a knowledge of values generally in the vicinity to be qualified to offer an opinion of value. *Kohl's Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb. App. 809, 638 N.W.2d, 881 (2002).

### **III. DISCUSSION**

The critical issue of this appeal is the value of the subject property on January 1, 2005.

The subject property is a commercial property made up of a residential house, building used as a mortuary and an attached garage, E 13:2. The house was built in 1953 (E13:5) with improvements made in 1998 - 1999. No improvements had been made since 2002.

Appellant did not dispute the valuation of the land, but only the improvements thereon (E 1:1). Testimony by Appellant stressed the extra costs of operating the funeral

business in Franklin and the diminished income received due to a decrease in the “call count” as possible reason for decreasing the County’s assessment of the property valuation. Testimony revealed that “call count” refers to the number of cases handled per year. Mr. Fisher stated that there had been a decrease in the total number of cases handled in recent years and the nature of services requested resulted in less income due to increase in the number of “non traditional” burials such as cremations.

Testimony was solicited from the Appellant regarding the negative economic factors affecting the business climate in Franklin County. This testimony, along with the specific factors affecting the mortuary business, enlightened the Commission on the declining business climate in Franklin County. Evidence about the specific business of Appellant and the general economic condition of the county do not by itself address directly the assessment of the property valuation issue before the Commission.

The Appellant’s opinion of value of the subject property was \$79,350.00. This value is the same value assessed by the County in 2002 and 2003, E 13:1. Appellant’s comparables lend little evidence as to valuation of the subject property. The first comparable, E 9, is a 15 unit motel which only shares the category of “commercial property in Franklin” in common with the subject property. The second and third comparable, E 11 and E 12, are storefronts located on the main street of Franklin which are not comparable to the subject property.

The only method available to value the subject property is by the cost approach. This restriction of valuation methods is in large part a result of the fact that there was only one sale of a mortuary in Nebraska during the three years prior to January 1, 2005 thus ruling out comparison of the subject property to other comparable sales.

The County offered comparable properties using the cost approach. These comparable properties are found at exhibits 15 - 18. An analysis of the value per square foot of assessed value ranges from \$19.72 to \$33.90. The subject property was assessed at \$21.43/square foot.

A difference was noted between exhibit E 8:3, the County's Final Determination of Value, and the Property Record Card, E 13:1. The Assessor testified that after the protest was filed by the Appellant she went out to inspect the subject property with members of the County Board of Equalization. They jointly concurred in increasing the depreciation of the subject property and to reduce the valuation of the improvements to the subject property to \$90,700.00. The Assessor had already made this change to her property record card, E 13:1. Her testimony was that the actual value of the improvements to the subject property should be \$90,700.00 vs the \$94,595 shown on E 8:3.

The Commission believes that the County Board of Equalization did not err in lowering the assessment of the subject property and that the presumption of correctness was not overcome by the Appellant nor did the County act in an unreasonable or arbitrary manner in valuing the subject property for the tax year 2005.

**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 as corrected by this order.
2. Taxable value of the subject property for the tax year 2005 is:

Land value           \$ 3,890.00  
Improvement value \$ 90,70000  
Total value           \$ 94,590.00.

3. This decision, if no appeal is timely filed, shall be certified to the Franklin County Treasurer, and the Franklin 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 June 12, 2006.

**Signed and Sealed.** June 12, 2006.

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Susan S. Lore, Commissioner

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Robert L. Hans, 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.**