

**NEBRASKA TAX EQUALIZATION  
AND REVIEW COMMISSION**

BERNARDETTE P. KOWAL,	)	
	)	
Appellant,	)	CASE NOs 05R-031, 05R-032 & 05R-033
	)	
v.	)	DECISION AND ORDER AFFIRMING
	)	THE DECISION OF THE DOUGLAS
DOUGLAS COUNTY BOARD OF	)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,	)	
	)	
Appellee.	)	
	)	

The above-captioned cases were called for a hearing on the merits of appeals by Bernardette P. Kowal 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 March 16, 2006, pursuant to a Notice and Order for Hearing issued January 6, 2006. Commissioners Wickersham, Warnes, and Hans were present. Commissioner Wickersham presided at the hearing.

Bernardette P. Kowal, ("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 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 shown in the following tables ("the subject property").
2. Taxable value of each parcel 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 by the Taxpayer in timely protests, and taxable value as determined by the County Board is shown in the following tables:

Case No. 05R-031

Description: Lot 1, Block 17, and ½ of vacated Pine Street, Kountze 3rd Addition Omaha, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$5,100.00	\$-0-	\$ 5,100.00
Improvement	\$55,000.00	\$-0-	\$55,000.00
Total	\$60,100.00	\$39,000.00	\$60,100.00

Case No. 05R-032

Description: Lot 2, Block 17, and ½ of vacated Pine Street, Kountze 3rd Addition Omaha, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$5,100.00	\$-0-	\$ 5,100.00
Improvement	\$85,000.00	\$-0-	\$85,000.00
Total	\$90,100.00	\$63,500.00	\$90,100.00

Case No. 05R-033

Description: Lot 3, Block 17, and ½ of vacated Pine Street, Kountze 3rd Addition Omaha, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$5,100.00	\$-0-	\$ 5,100.00
Improvement	\$65,600.00	\$-0-	\$65,600.00
Total	\$70,700.00	\$46,800.00	\$70,700.00

3. The Taxpayer timely filed appeals of the County Board's decisions to the Commission.
4. The County Board was served with Notices in Lieu of Summons, and duly answered those Notices.
5. The Taxpayer's appeals were consolidated for hearing by order of the Commission.
6. An Order for Hearing and Notice of Hearing issued on January 6, 2006, set a hearing of the Taxpayer's appeals for March 16, 2006, at 1:00 p.m. CST.
7. 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.
8. For reasons stated below, the Taxpayer has not adduced sufficient, clear and convincing evidence that the decisions of the County Board are unreasonable or arbitrary, and the decisions of the County Board should be affirmed.
9. Taxable value of each parcel for the tax year 2005 is:

Case No. 05R-031

Description: Lot 1, Block 17, and ½ of vacated Pine Street, Kountze 3rd Addition Omaha, Douglas County, Nebraska.

Land value	\$ 5,100.00
Improvement value	<u>\$55,000.00</u>
Total value	<u>\$60,100.00.</u>

Case No. 05R-032

Description: Lot 2, Block 17, and ½ of vacated Pine Street, Kountze 3rd Addition Omaha, Douglas County, Nebraska.

Land value	\$ 5,100.00
Improvement value	<u>\$85,000.00</u>
Total value	<u>\$90,100.00.</u>

Case No. 05R-033

Description: Lot 3, Block 17, and ½ of vacated Pine Street, Kountze 3rd Addition Omaha, Douglas County, Nebraska.

Land value	\$ 5,100.00
Improvement value	<u>\$65,600.00</u>
Total value	<u>\$70,700.00.</u>

**II.**  
**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. 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).

4. “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).
5. 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).
6. 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).
7. “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).
8. “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. Cons.*, art. VIII, §1

9. 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).
10. 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).
11. 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).
12. Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief." *Benyon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534, (1983).
13. 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).
14. "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).

15. 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).
16. 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).
17. "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 consists of three adjoining parcels. Each of the parcels is improved with a residence. Two of the residences are used as rental properties. The largest residence is used by the Taxpayer as her home. The Taxpayer made two claims in her appeals. The Taxpayer alleges that the subject property had been singled out for a valuation increases in the year 2005 and that the value determined by the County Board was not equalized with other parcels in her neighborhood.

The record shows that the actual values determined for the subject property by the County Board for the tax year 2005 were the values proposed by the County Assessor for the tax year 2004 but modified in that year by the County Board. (E1:11, E2:12 and E3:13). The most that can be drawn from the record is that the assessors opinion of value had not changed from

tax year 2004 to tax year 2005 but the Board's had. The Commission cannot conclude on that record that the actions of the County Assessor or the County Board demonstrated ill will or a failure to adhere to the law or selective assessment.

The Taxpayer also asserted that the parcels comprising the subject property were not equalized with other homes in the neighborhood. The Taxpayer defined the neighborhood as a three block area extending one block to the South and one block to the North of the block containing the parcels in the subject property. The Taxpayer's son testified concerning assessed values for parcels in the neighborhood as defined by the Taxpayer. Equalization requires the comparison of ratios of assessed value to actual value for a subject and comparable properties. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999). The Taxpayer presented no testimony concerning the actual value of other properties. All of the evidence for other properties concerned assessed values of those properties as determined by the Assessor. That is only half of the equation.

The Taxpayer testified that two parcels of the subject property were rental properties and that both were vacant as of the assessment date. The Taxpayer also testified that a junkyard was present across the street from the subject property. The Taxpayer testified that her opinion of actual value for the parcels as of January 1, 2005, was stated in the protests she filed with the County Board. The Taxpayer's son testified that those values were calculated as suggested by a member of the Douglas County Board at \$50.00 per square foot. The Commission, like the County Board for tax year 2005 is unable to adopt the advice of one member of the County Board as evidence of actual or fair market value as of the assessment date.



There is no evidence that the County Assessor has inspected the subject property. Any presumption that the County Boards decisions were correct is extinguished. *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 580, 144 N.W.2d 161, 169 (1966). The Taxpayer is required however to show that actual values as determined by the County Board were unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005)

The Commission is unable to determine that the actions of the County Board were unreasonable or arbitrary.

**V.  
ORDER**

**IT IS THEREFORE ORDERED THAT:**

1. The decisions of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2005, are affirmed.
2. Taxable value of each parcel of the subject property for the tax year 2005 is:

Case No. 05R-031

Description: Lot 1, Block 17, and ½ of vacated Pine Street, Kountze 3rd Addition Omaha, Douglas County, Nebraska.

Land value	\$ 5,100.00
Improvement value	<u>\$55,000.00</u>
Total value	<u>\$60,100.00.</u>

Case No. 05R-032

Description: Lot 2, Block 17, and ½ of vacated Pine Street, Kountze 3rd Addition Omaha, Douglas County, Nebraska.

Land value	\$ 5,100.00
Improvement value	<u>\$85,000.00</u>
Total value	<u>\$90,100.00.</u>

Case No. 05R-033

Description: Lot 3, Block 17, and ½ of vacated Pine Street, Kountze 3rd Addition Omaha, Douglas County, Nebraska.

Land value	\$ 5,100.00
Improvement value	<u>\$65,600.00</u>
Total value	<u>\$70,700.00.</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 March 27, 2006.

**Signed and Sealed.** March 27, 2006.

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Wm. R. Wickersham, 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.**