

**NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

GEORGE MEDEIROS,)	
)	
Appellant,)	CASE NOs 05R-231, 05R-232
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE SARPY
SARPY COUNTY BOARD OF)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	
)	

The above-captioned cases were called for a hearing on the merits of appeals by George Medeiros 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 7, 2006, pursuant to a Notice and Order for Hearing issued January 4, 2006. Commissioners Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

George Medeiros, ("the Taxpayer") was present at the hearing without legal counsel.

The Sarpy County Board of Equalization ("the County Board") appeared through legal counsel, Brett S. Charles, a Deputy County Attorney for Sarpy 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. 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 as shown in the following table ("the subject property")

2. Taxable value of each parcel of the subject property proposed by the Sarpy County Board, proposed by the Taxpayer in a timely protest, and as determined by the County Board is shown in the following tables:

Case No. 05R-232

Subject Property Description: Outlot 72, Hanson Lakes, Sarpy County, Nebraska.

	Board Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$12,223.00	\$5,000.00	\$12,223.00
Improvement	\$4,965.00	\$4,965.00	\$4,965.00
Total	\$17,188.00	\$9,965.00	\$17,188.00

Case No. 05R-232

Subject Property Description: Outlot 75, Hanson Lakes, Sarpy County, Nebraska.

	Board Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$29,663.00	\$5,000.00	\$29,663.00
Improvement	\$6,280.00	\$6,280.00	\$6,280.00
Total	\$35,943.00	\$11,280.00	\$35,943.00

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 4, 2006, set a hearing of the Taxpayer's appeals for March 7, 2006, at 9:00 a.m..

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. The Taxpayer has not adduced sufficient, clear and convincing evidence to overcome the burden of proof in favor of the County Board.
9. The decisions of the County Board were neither arbitrary nor unreasonable.
10. The decisions of the County Board should be affirmed.
11. Based on the entire record before it, the Commission finds and determines that taxable value of each parcel for the tax year 2005 is:

Case No. 05R-231

Land value	\$12,223.00
Improvement value	<u>\$ 4,965.00</u>
Total value	<u>\$17,188.00.</u>

Case No. 05R-232

Land value	\$29,663.00
Improvement value	<u>\$ 6,280.00</u>
Total value	<u>\$35,943.00.</u>

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. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004).
5. “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).
6. Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Neb. Rev. Stat. §77-112 (Reissue 2003).
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. 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).

9. 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).
10. 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).
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. 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).
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. “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).

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).
17. The appraisal of real estate is not an exact science. *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874, (1977).

IV. DISCUSSION

The subject property consists of two parcels with improvements at Hanson's Lake in Sarpy County, Nebraska. The parcels do not have lake frontage and are characterized as outlots. The value of the improvements is not at issue.

The Taxpayer's protests were filed on July 18, 2005. (E14:1 and 2). The narrative provided by the County Board indicates a change in proposed values after consideration of an initial protest by the Taxpayer. (E3:1). The Commission concludes that the County Board of Equalization acted under the provisions of Neb. Rev. Stat. 77-1504 (Reissue 2003) to establish taxable value of the subject property for the tax year 2005.

The Taxpayer contends that because Outlots 72 and 75 are larger than necessary to accommodate the improvements on them that any excess land should be valued at a lower rate. The Taxpayer testified that in his opinion actual values of the outlots as of the assessment date were \$10,000.00 for Outlot 75 and \$7,000 for Outlot 72. The Taxpayer testified that use of the subject property is restricted because the parcels are outlots. The applicable restrictions prohibit construction of a residence on the outlots but do not prohibit construction of other buildings. Outlot 72 has one structure on it and Outlot 75 has two. (E6:1). The Taxpayer testified that

other structures could be built, utilizing more of each outlot's area. The building restrictions do not make any part of the subject property useable or subject to valuation at differing rates.

Due to a lack of arms length sales for outlots at Hanson's Lake the County Board relied on sales of outlots at Chris Lake to establish as per square foot value of \$.60 for outlots at Hanson's Lake. (E3:1). The sales relied on by the County Board are shown in Exhibit 13 at page 1. The outlots sold at Chris Lake range in size from 4,847 square feet to 22,289 square feet. (E13:1). Outlot 72 of the subject property contains 20,372 square feet. (E4:2). Outlot 75 of the subject property contains 49,439 square feet. (E5:2). The principle of economies of scale may effect calculation of value on a per square foot basis with a reduction in the value per square foot as size increases. *The Appraisal of Real Estate*, 12th Edition, The Appraisal Institute, 2001, p. 425. Sales of outlots at Chris Lake do not show that effect as sales of larger and smaller outlots were generally for \$.60 per square foot. (E13:1). The Taxpayer testified that Chris Lake is near Hanson's Lake and that the outlots at Chris Lake are subject to restrictions which are substantially the same as those for outlots at Hanson's Lake and are on that basis comparable to the subject property.

The Taxpayer has not shown that the decisions 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, as follows:

Case No. 05R-231

Land value	\$12,223.00
Improvement value	<u>\$ 4,965.00</u>
Total value	<u>\$17,188.00.</u>

Case No. 05R-232

Land value	\$29,663.00
Improvement value	<u>\$ 6,280.00</u>
Total value	<u>\$35,943.00.</u>

are affirmed.

2. This decision, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer, and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Supp. 2005).
3. Any request for relief, by any party, which is not specifically provided for by this order is denied.
4. Each party is to bear its own costs in this proceeding.
5. This decision shall only be applicable to tax year 2005.

6. This order is effective for purposes of appeal March 13, 2006.

Signed and Sealed. March 13, 2006.

Wm. R. Wickersham, Commissioner

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.