

**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

CI PROPERTIES, LLC,)	
)	
Appellant,)	Case No 05C-220
)	
v.)	DECISION AND ORDER REVERSING
)	THE DECISION OF THE ADAMS
ADAMS 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 CI Properties, LLC 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 October 25, 2006, pursuant to a Notice and Order for Hearing issued July 3, 2006. Commissioners Wickersham, Warnes, and Lore were present. Commissioner Wickersham presided at the hearing.

Steve Craig, Manager - Member was present at the hearing on behalf of CI Properties, LLC ("the Taxpayer"), without legal counsel.

The Adams County Board of Equalization ("the County Board") appeared through legal counsel, Charles A. Hamilton, a Deputy County Attorney for Adams County, Nebraska.

The Commission took statutory notice, received exhibits and heard testimony.

The Commission with the consent of the parties, reformed the case caption to reflect the interest of CI Properties LLC..

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.
ISSUES**

The Taxpayer has asserted that actual value of the subject property is less than actual value as determined by the County Board. The issues on appeal related to that assertion are:

Was the decision of the County Board determining actual value of the subject property unreasonable or arbitrary?

What was actual value of the subject property on January 1, 2005?

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described as Lot 1 Craig Industrial Park subdivision, City of Hastings, Adams 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 Adams 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 1 Craig Industrial Park subdivision, City of Hastings, Adams County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 17,900.00	\$	\$ 17,900.00
Improvement	\$179,850.00	\$	\$179,850.00
Total	\$197,750.00	\$124,250.00	\$197,750.00

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 July 3, 2006, set a hearing of the Taxpayer's appeal for October 25, 2006, at 1:00 p.m. CDST. The hearing was convened on October 23, 2006, at 2:03 p.m. CDST on the agreement of the parties.
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. Taxable value of the subject property for the tax year 2005 is:

Land value \$ 17,900.00
Improvement value \$148,662.00
Total value \$166,562.00.

**III.
APPLICABLE LAW**

1. “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).

2. 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).
3. 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).
4. “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).
5. 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).
6. 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).

7. 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).
8. 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).
9. 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)
10. 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).
11. "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).

12. 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).
13. 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).
14. 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).

IV. DISCUSSION

The subject property is a storage warehouse built in 1996. (E18:5). The Taxpayer testified that the warehouse contains 7 units of various sizes.

The Taxpayer testified that he believed that the subject property should have its actual value determined with reference to the sale price of a comparable storage warehouse. The comparable proposed by the Taxpayer is described in Exhibit 12. The proposed comparable was built in 1994, has 9,318 square feet of storage space, a loafing shed 10,266 square feet of concrete, 708 square foot storage mezzanine and 432 square feet of office space. (E12:2). The subject property consists of 7,000 square feet of storage space, and 1,176.00 square feet of concrete. (E18:5). There are obvious differences between the two parcels.

The proposed comparable sold on January 28, 2005, for \$138,000. (E12:1). The Taxpayer argues that the sale price of the proposed comparable may be used to determine value of the subject property because it is only two years older than the subject and is a steel sided building. Even if the parcels were comparable the sale referenced by the Taxpayer is a sale by a creditor after foreclosure. (E13 and 14). If a sale of a parcel is to be considered evidence of its actual value the sale must be an arms length transaction. *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982).

An arms length transaction has been defined variously as: A transaction between unrelated parties under no duress. *The Appraisal of Real Estate*, Twelfth Edition, Appraisal Institute, p. 150 (2001); A sale between two or more parties, each seeking to maximize their positions from the transaction. 350 Neb. Admin. Code, ch 12 §002.21 (03/04); and as a sale in the open market between unrelated parties, each of whom is reasonably knowledgeable of market conditions and under no undue pressure to buy or sell. *Glossary of Real Estate Appraisal and Assessment*, International Association of Assessment Officers, p124 (1997). In this case the seller had not been operating the warehouse prior to sale and had obvious motives for sale that were not associated with a seller whose sole motivation is obtaining the highest price possible. The parcel had sold six months prior to the foreclosure sale for an amount that was 2.45 times the sale after foreclosure. (12:1). That differential is evidence of the special motivation to sell after foreclosure. The Commission concludes that the sale of the proposed comparable on January 28, 2006 was not an arms length transaction and cannot be considered.

The taxable value of the subject property was determined by the County Board relying on the cost approach. (E18:2). Taxable value of a parcel described in Exhibit 22 was also determined using the cost approach. (E22:6).

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*, 2nd 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*, 2nd Ed., International Association of Assessing Officers, 1996, pp. 154.

The subject property and the parcel described in Exhibit 22 are highly comparable. The improvements on both parcels are steel sided storage warehouses built in 1996 with concrete drives. (E18:5 and E22:6). The improvements on both parcels are rated as class S construction, with quality ratings of 200 and condition ratings of 20. (E18:5 and E22:6). The comparable has two buildings of 5,000 square feet each and the subject has 7,000 square feet. (E18:5 and E22:6). The major difference between the valuation factors used for the two properties is the assignment of physical depreciation. The subject was assigned 18% physical depreciation for the building and 60% physical depreciation for the concrete drive. (E18:5). The comparable was assigned 33% physical depreciation for the buildings and 34% physical depreciation for the concrete drives. Given the construction, quality and construction ratings and descriptions of improvements on the two parcels nothing in generally accepted appraisal practice, as known to the Commission, could account for the difference in physical depreciation factors utilized by the County Board. There is clear and convincing evidence that taxable value of the subject property as determined by the County Board was incorrect, arbitrary, and unreasonable. The County Board did not defend its determination in this case.

The Commission determines that taxable value of the subject property should be determined utilizing a physical depreciation factor of 33% applied to the building and a 34% depreciation factor applied to the concrete drive on the subject property.

V
CONCLUSIONS OF LAW

1 The Commission has subject matter jurisdiction in this appeal.

2. 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).
3. The Commission has jurisdiction over the parties to this appeal.
4. 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.

**VI.
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	\$ 17,900.00
Improvement value	<u>\$148,662.00</u>
Total value	<u>\$166,562.00.</u>
3. This decision, if no appeal is timely filed, shall be certified to the Adams County Treasurer, and the Adams 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 November 6, 2006.

Signed and Sealed. November 6, 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.