

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

|                          |   |                              |
|--------------------------|---|------------------------------|
| MARY ANN RADDATZ,        | ) |                              |
|                          | ) |                              |
| Appellant,               | ) | Case No 05R-017              |
|                          | ) |                              |
| v.                       | ) | DECISION AND ORDER AFFIRMING |
|                          | ) | THE DECISION OF THE CHEYENNE |
| CHEYENNE 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 Mary Ann Raddatz to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Holiday Inn Express, 6645 Chase Blvd., Sidney, Nebraska, on October 31, 2006, pursuant to a Notice and Order for Hearing issued October 3, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Warnes presided at the hearing.

Mary Ann Raddatz, ("the Taxpayer") was present at the hearing without legal counsel.

The Cheyenne County Board of Equalization ("the County Board") appeared through legal counsel, Paul B. Schaub, County Attorney for Cheyenne County, Nebraska.

The Commission took statutory notice, received exhibits and heard testimony. The Taxpayer called one witness and introduced Exhibits 2 - 8 all of which were received without objection. The County called one witness and introduced Exhibits 9 - 18 all of which were received without objection. The case file and Exhibit one were also received into evidence without objection.

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 appeals taxable value as determined by the Cheyenne County Board of Equalization for the subject property. In other words, that the taxable value of said property exceeded its actual value. Also alleged is that said property was not equalized in taxable value with other comparable properties in Cheyenne County.

The issues to be decided are (1) Has the Taxpayer provided proof that the taxable value placed upon her property by the Cheyenne County Board of equalization was incorrect and arbitrary or unreasonable, thus overcoming the burden of proof imposed by statute? (2) Has the Taxpayer proven the actual or fair market value of the subject property? (3) Has the Taxpayer proven that the equalized taxable value of the subject property was not equalized with the taxable value of other properties in Cheyenne County?

**II.  
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described as SOUTH 15 FEET OF LOT 6 AND NORTH 60 FEET OF LOT 7 BLOCK 15 SIDNEY COUNTRY CLUB SECOND ADDITION, Cheyenne 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 Cheyenne 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: SOUTH 15 FEET OF LOT 6 AND NORTH 60 FEET OF LOT 7 BLOCK 15 SIDNEY COUNTRY CLUB SECOND ADDITION, Cheyenne County, Nebraska.

|             | Assessor Notice Value | Taxpayer Protest Value | Board Determined Value |
|-------------|-----------------------|------------------------|------------------------|
| Land        | \$ 11,405.00          | \$                     | \$ 11,405.00           |
| Improvement | \$ 99,807.00          | \$                     | \$ 99,807.00           |
| Total       | \$111,212.00          | \$101,843.00           | \$111,212.00           |

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 October 3, 2006, set a hearing of the Taxpayer's appeal for October 31, 2006, at 10:00 p.m. MST.
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                   \$ 11,405.00

Improvement value       \$ 99,807.00

Total value                   \$111,212.00.

### 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. “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. Const.*, art. VIII, §1
8. Equalization to obtain proportionate valuation 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 N.W.2d 623, (1999).
9. 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).
10. 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).
11. 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).

12. 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).
13. 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)
14. 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).
15. "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).
16. 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).

17. 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).
18. “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).

#### **IV. DISCUSSION**

The subject property is a split- level single-family residence located at 2640 El Rancho Road, Sidney, Nebraska, containing 1,764 square feet.

The Taxpayer requested a total taxable valuation of \$101,843.00. The County’s taxable valuation was \$111,212. The taxpayer’s requested valuation was derived by adding 3% to the valuation for 2004. The 3% increase was due to the Cost of Living Index. This method of calculating valuation is not an approved valuation method nor does it comply with the valuation methods required under Nebraska law.

The County’s taxable value for the subject property was calculated using the cost approach as shown on exhibits 9:4 and 9:5. Depreciation used by the County in its cost approach method was derived from an analysis of the residential sales roster for the real estate market in Cheyenne County.

The Taxpayer provided only one comparable property shown on Exhibit 8:2. This was for her neighbor’s property. This property was valued at \$132,740. A comparison of the residence on this parcel shows that it is a ranch style single family house with 2,122 square feet

as compared to 1,764 square feet for the subject property. The houses share almost the same valuation cost per square foot with the larger house having a value per square foot of \$56 while the subject property for the same value had a value of \$57. The reduction in cost per square foot to build a larger house may be explained by concept of “economies of scale”, *The Dictionary of Real Estate Appraisal, Fourth Edition*, p.92, The Appraisal Institute, 2002. A reduction in cost of production per unit occurs with a large number of items produced

Taxpayer referred to properties north and south of her house as having less increase in valuation, See Exhibit 7:2. There were no property record cards introduced by the Taxpayer regarding these neighboring properties, but the County introduced Exhibit 10:1 which shows all of the valuation increases for houses in the neighborhood. The average increase in valuation for the neighborhood surrounding the subject property was fifteen ( 15% ) percent versus the increase to the subject property of twelve and one-half ( 12.5% ) percent.

The Taxpayer did not provide sufficient evidence to rebut the presumption that the County had assigned an incorrect taxable valuation to her property nor that the County had been incorrect, arbitrary or unreasonable in its assessment of the taxable value for same.

The Taxpayer did not provide sufficient evidence that the taxable value of the subject property was not equalized with the taxable valuation of other like properties in Cheyenne County.



**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 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.

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

|                   |                      |
|-------------------|----------------------|
| Land value        | \$ 11,405.00         |
| Improvement value | <u>\$ 99,807.00</u>  |
| Total value       | <u>\$111,212.00.</u> |
3. This decision, if no appeal is timely filed, shall be certified to the Cheyenne County Treasurer, and the Cheyenne 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 13, 2006.

**Signed and Sealed.** November 13, 2006.

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Wm. R. Wickersham, Commissioner

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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.**