

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

WOODROW T. WILSON,)	
)	
Appellant,)	Case No 05R-233
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE DOUGLAS
DOUGLAS COUNTY BOARD OF)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	

**I.
STATEMENT OF FACTS**

The above-captioned case was called for a hearing on the merits of an appeal by Woodrow T. Wilson 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 November 8, 2006, pursuant to a Notice and Order for Hearing issued October 26, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Warnes presided at the hearing.

Woodrow T. Wilson, ("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.

II. ISSUES

The Taxpayer has asserted that actual value of the subject property as of January 1, 2005, 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? The Taxpayer has asserted that taxable value of the subject property as of January 1, 2005, is not equalized with the taxable value of other real property. The issues on appeal related to that assertion are:

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

Was taxable value of the subject property determined by the County Board in a manner and an amount that is uniform and proportionate as required by Nebraska's Constitution in Article VIII §1?

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

III. FINDINGS OF FACT

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described as GREENLEA ADD LOT 8 BLOCK 2 52.15 x 135.55, Douglas County, Nebraska, ("the subject property").

2. Actual value 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 in a timely protest, and actual value as determined by the County Board is shown in the following table:

Case No. 05R-233

Description: GREENLEA ADD LOT 8 BLOCK 2 52.15 x 135.55, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 12,600.00	\$	\$ 12,600.00
Improvement	\$178,400.00	\$	\$162,200.00
Total	\$191,000.00	\$145,000.00	\$174,800.00

3. An appeal of the County Board's decision was filed with the Commission.
4. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
5. An Amended Order for Hearing and Notice of Hearing issued on October 26, 2006, set a hearing of the appeal for November 8, 2006, at 3:00 CST. The hearing was reset by telephone agreement to November 8, 2006 at 1:00 CST.
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	\$ 12,600,00
Improvement value	<u>\$162,200.00</u>
Total value	<u>\$174,800.00.</u>

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

This appeal involves a 2 ½ story home located at 5628 Emile Street, Omaha, Nebraska. The home was built in 1923 and has 1,994 square feet (SF) gross living area (GLA) (E2:5). The home is of good quality and has a masonry common brick exterior(E2:5). The subject property has four bedrooms and 1.5 baths.

Appellant argues that the subject property was not equalized with two houses on his same block. He also believes that the taxable value of the subject property was \$165,000 on January 1, 2005. Appellant did not provide any property record files for properties in his neighborhood or the surrounding community. There were no sales of comparable properties offered by Appellant for comparison to the subject property.

The Appellant did not provide sufficient evidence to rebut the presumption that the county was correct in their assessment of taxable valuation of the subject property.

Accordingly, relief cannot be granted to Appellant.

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	\$ 12,600,00
Improvement value	<u>\$162,200.00</u>
Total value	<u>\$174,800.00.</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 November 14, 2006.

Signed and Sealed. November 14, 2006.

Wm. R. Wickersham, Commissioner

Susan S. Lore, Commissioner

Robert L. Hans, 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.