

**NEBRASKA TAX EQUALIZATION  
AND REVIEW COMMISSION**

SCOTT MCCORMICK, JR.,	)	
	)	
Appellant,	)	CASE NO 05R-119
	)	
v.	)	DECISION AND ORDER AFFIRMING
	)	THE DECISION OF THE ADAMS
ADAMS 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 Scott McCormick, Jr., to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Holiday Inn Express, 508 2nd Avenue, Kearney, Nebraska, on August 17, 2006, pursuant to a Notice and Order for Hearing issued June 2, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Warnes presided at the hearing.

Scott McCormick, Jr., ("the Taxpayer") was present at the hearing 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 Taxpayer called one witness and introduced Exhibits 2 to 15 all of which were received without objection. The County Board did not call any witnesses but offered Exhibit 16 which was received without objection. The Commission received Exhibit 1 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.

## **II. STATEMENT OF ISSUES**

The Taxpayer appeals taxable value as determined by the Adams 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 Adams County.

The issues to be decided are ( 1 ) Has the Taxpayer provided proof that the taxable value placed upon his property by the Adams County Board of Equalization was incorrect and arbitrary or unreasonable, thus overcoming the burden of proof imposed by statute? ( 2 ) Has the Taxpayer shown the actual or fair market value of subject property after making a showing that the County Board was incorrect, arbitrary or unreasonable? ( 3 ) Did the Taxpayer prove that the taxable value placed on the subject property was not equalized with the taxable value of other properties in Adams County?

## **III. FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described as Lot 3, BLK 1, LOCHLAND COUNTRY CLUB SUB DIV #7, 25 - 8 - 10 HIGHLAND TWP., 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 3, BLK 1, LOCHLAND COUNTRY CLUB SUB DIV #7, 25 - 8 - 10  
HIGHLAND TWP., Adams County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 16,235.00	\$ 16,235.00	\$ 16,235.00
Improvement	\$148,495.00	\$142,285.00	\$148,495.00
Total	\$164,730.00	\$158,520.00	\$164,730.00

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 June 2, 2006, set a hearing of the Taxpayer's appeal for August 17, 2006, at 8:00 a.m.
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. For reasons stated below, the Taxpayer has not adduced sufficient, clear and convincing evidence of the equalized value of the subject property or its actual value and the decision of the County Board should be affirmed.

8. Taxable value of the subject property for the tax year 2005 is:

Land value	\$ 16,235.00
Improvement value	<u>\$148,495.00</u>
Total value	<u>\$164,730.00.</u>

**IV.  
CONCLUSIONS OF LAW**

1. 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)
2. The Commission has jurisdiction over the parties to this appeal.
3. “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).
4. 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).

5. 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).
6. “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).
7. 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).
8. 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).
9. “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
10. 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).
11. 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).

12. 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).
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).

## V. ANALYSIS

The subject property is one half of a duplex located at 804 Madden Road, Hastings, Nebraska. The Taxpayer presents valuation issues of actual value and equalization in his appeal. The Commission finds that the Taxpayer has provided sufficient evidence to remove the presumption that the County was correct in determining taxable value. The Commission further finds that the Taxpayer has not provided sufficient evidence of actual value or the equalized taxable value of the subject property in order to grant relief.

Taxpayer confirmed by his testimony that he did not have any dispute with the characteristics of the subject property as shown in the property record file of the County as shown on Exhibit 7 because they showed the County failed to properly value the subject property. The housing complex in which the subject property is located is known as Loch Haven Town Homes. It consists of four buildings each with two dwellings, for a total of eight housing units. Taxpayer's evidence included the property record files for each of the eight units in the housing complex, Exhibits 6 & 8 - 13. He did not have a dispute with any of the characteristics shown in the property record files for these comparable properties, Exhibits 6, 8 - 13. It is upon that record that the Commission makes its analysis.

An argument made by Taxpayer is that the subject property is valued too high in comparison to the other properties in Loch Haven Town Homes housing complex. There was no attempt by Taxpayer to compare his property with any other properties outside of the Loch Haven Town Homes complex. The Taxpayer did not have a problem with the process used to assess his property, but he does believe the County misapplied that process in its determination

of taxable value for the subject property. The Taxpayer’s primary support for this contention are the errors shown in the assessment practices used for valuing the properties in the Loch Haven Town Homes complex. A second concern expressed by the Taxpayer was the exercise of his 5<sup>th</sup> Amendment right of privacy. The exercise of this right is his basis for denying an inspection of his property by the Adams County Assessor.

The subject property is described on Exhibit 7 pages 1 through 6. Each of the other properties in the Taxpayer’s housing complex are described on the property record files submitted by Taxpayer as Exhibits 6 and 8 through 13. An analysis of those property record files is shown as a spreadsheet below. This analysis was compiled by the Commission in its review of the Exhibits.

INFORMATION FROM PROPERTY RECORD FILES ( PRF ) FOR THE LOCH HAVEN HOUSING COMPLEX ( 8 PROPERTIES ) EXHIBITS 6 - 13.								
Address	Subject	(All properties are located on Madden Road)						
	804	802	806	808	810	812	814	816
Quality	Good	Good+	Good	Good+	Good	Good	Good	Good
Condition	Good	Good	Good	Good	Good	Good	Good	Good
Type	S. Fam	Thse/Dup	Thse/Dup	S. Fam	Thse/Dup	Thse/Dup	Thse/Dup	Thse/Dup
Arch	1 sty	1 sty	1.5 fin	1.5 fin	1.5 fin	1.5 fin	1.5 fin	1.5 fin
Ext Wall	Ws/Bv	Ws/Bv	Mas Ven	Wd Sdg	Mas Ven	Mas Ven	Hd/Mv	Hdbd
Base Area	1347	1337	1517	1440	1803	1512	1598	1598
Total Area	1347	1337	1757	1680	2393	2078	2337	2406
Roof	wd shake	wd shake	wd shake	wd shake	wd shake	wd shake	wd shake	wd shake
HVAC	WAAC	WAAC	WAAC	WAAC	WAAC	WAAC	WAAC	WAAC
Fndn	Prd con	Prd con	Prd con	Prd Con	Prd Con	Prd Con	Prd Con	Prd Con
Cr. Space					280			
Basement	1347	1337	1465	1390	1505	1446	1538	1538
Finish	par 1247	par 1203	par 1280		par 723	min 1048	par 769	



	Subject (All properties are located on Madden Road)							
Address	804	802	806	808	810	812	814	816
Fixtures	11	10	9	9	12	9	12	9
Bed	2	2	2	2	2	2	2	2
Bath	2	2	2	2	3	1.5	3	2
Garage	att	att	att	att	att	att	att	att
Area	506	506	400	400	400	400	480	480
Gar finish			400	400		400	480	
YB	1985	1986	1988	1987	1988	1989	1991	1991
Actual	20	19	17	18	17	16	14	14
Effective	19							
Dep	0.18	0.15	0.21	0.07	0.11	0.11	0.18	0.05
Dep/Yr	0.900%	0.789%	1.235%	0.389%	0.647%	0.688%	1.286%	0.357%
FP	\$3,265	\$3,685	\$3,400	\$3,550	\$3,400	\$3,400	\$3,400	\$3,400
SWP	51 sf	85 sf						156 sf
Cost	\$3,885	\$5,825						\$7,945
SWP	96 sf							
Cost	\$5,350							
WOD	260 sf		168 sf	200 sf	32 sf	168 sf	196 sf	
Cost	\$3,150		\$2,685	\$3,090	\$900	\$2,685	\$2,930	
Wood Balc						32 sf		
Cost						\$495		
RPS		14 sf	40 sf	30 sf	40 sf	30 sf	40 sf	40 sf
Cost		\$505	\$1,265	\$1,025	\$1,265	\$980	\$1,265	\$1,265
OSP		294 sf			198 sf			
Cost		\$1,760			\$1,130			
Con Dr	799 sf	578 sf	500 sf	765 sf	340 sf	578 sf	340 sf	459 sf
Cost	\$2,395	\$1,735	\$1,500	\$2,295	\$1,020	\$1,735	\$1,020	\$1,375
Value/sf	\$110.00	\$111.00	\$81.00	\$87.00	\$77.00	\$73.00	\$71.00	\$71.00
Lot	\$16,235	\$14,960	\$17,655	\$12,425	\$10,600	\$13,515	\$12,075	\$10,080
Imps	\$148,495	\$148,100	\$141,785	\$146,080	\$183,535	\$151,885	\$165,705	\$171,450
Total	\$164,730	\$163,060	\$159,440	\$158,505	\$194,135	\$165,400	\$177,780	\$181,530
	(E7:6)	(E6:6)	(E8:6)	(E9:6)	(E10:5)	(E11:5)	(E12:6)	(E13:6)

Exhibit 7:6 shows the characteristics of the subject property as determined by the County and its actual value as determined using the cost approach. The cost approach to valuation is but one method that could be used to determine actual value, Neb. Rev. Stat. 77-112 (Reissue 2003 ).

It is critical in using the cost approach that correct information be used since the final product can only be as good as the data inputted. The type of property is not correctly entered for the subject property. The county has entered “single-family” as the type of property versus “town house/duplex”. This same error was made for 808 Madden Rd, ( E 9:6 ). A correct classification of the subject property would have decreased its valuation. This decrease would have resulted from the lower costs per square foot to build the property due to the common wall with the adjoining duplex and other factors. This conclusion can be seen in Marshall and Swift Residential Cost Handbook by comparing costs shown for single family dwellings on page Good - 15 versus costs shown for Town Houses and Duplexes shown on page Mul - 31. All of the other properties except 808 Madden Road in the Loch Haven Town Homes complex were correctly classified as “Townhouse/Duplex”. The Commission finds that on this one coding error alone the Taxpayer has shown that the County was incorrect in its calculation of taxable value and this removes the presumption that the County was correct in its determination. The unfortunate reality is that the Commission cannot determine what the decrease in taxable valuation would be for the subject property if this error were corrected.

There are other inconsistencies noted by the Commission when it examines the spreadsheet of the property record files for the properties located in the Loch Haven Town Homes housing complex. Most notable are the discrepancies in depreciation shown for each of the properties. For the subject property a depreciation of 18% was used; however, 21% depreciation was used for 806 Madden Rd. which is a property three years newer. One other property, that being 814 Madden Rd., had an 18% depreciation and it is six years newer than the subject property. From this it is apparent to the Commission that an increase in the amount of

depreciation should be applied to the subject property decreasing its valuation; however, the exact amount of such decrease is not known. Factors other than age can affect depreciation; however, an examination of the subject and the comparables shows that the depreciation assigned to various parcels cannot be reconciled with the depreciation assigned to the subject property. The Commission is unable to determine what net increase or decrease would result if the inconsistency noted for depreciation was corrected.

The Taxpayer has provided to the Commission the property record files for those properties which he believes are comparables and they have been referred to above. There is a problem seen by the Commission in the Taxpayer's using the assessed values of the other comparable properties to support his contention that his property is not properly assessed. To use this reasoning requires the assumption that the County has correctly assessed the comparable properties. The County's own records show that they made errors in valuation for both the subject property and the comparables.

A second problem is noted with the use of the comparable properties provided since they are similar, but are not completely comparable to that of the subject property. Exhibit 7:6 itemizes the miscellaneous improvements to the subject property which improvements include a fireplace valued at \$3265, a solid wall porch valued at \$3885, a second solid wall porch valued at \$5350, a wood deck valued at \$3150 and a concrete drive valued at \$2395. The improvements total \$18,045. There are no other properties provided which have the same type and amount of improvements.

The Taxpayer does not appear to have a dispute with the value of the land at \$16,235, Exhibit 15. From Exhibit 7:6 the Commission can see that the county valued the finished square

footage on the first floor of the subject property. The finished square footage of the first floor of the subject property is shown as 1,347 square feet. This figure was multiplied by a figure of \$111.61 per square foot for a total valuation of \$150,340. The cost per square foot to replace the subject property would have been noticeably lower if the subject property had been properly typed. This belief is supported by an examination of the pages from Marshall and Swift cited above. To this figure was added the \$18,045 in improvements and \$11,655 for the garage for a total replacement cost new of \$180,040. The county applied a depreciation of 18% to this total cost resulting in a replacement cost new less depreciation of \$148,495. When the value of the land is added to the replacement cost new less depreciation, the estimate of value is \$164,730.

A comparison of the subject property to all of the other properties in the housing complex shows that each property varies in the value of improvements, date of construction, depreciation and square footage of finished area on the first floor. It does not appear to the Commission that the value of the basements, either total or partially finished, were used directly for valuation of the compared properties. What the County appears to have done is used the area of finished and unfinished basement area to determine a cost per square foot for the house construction. Thus, in the case of the subject property the cost of construction was \$111.61/SF, but in the case of 802 Madden Rd. ( E 6 ) the cost is \$110/SF. The subject property has 1,347 total basement square feet with 1,247 SF being finished. Its companion duplex property at 802 Madden Rd. has a total of 1,337 basement square foot with 1,203 SF finished. The County used the basement area, both total square foot and percentage finished, in calculating the cost per square foot for construction.

There was another method of valuation that the Taxpayer could have used to demonstrate the correct valuation of his property. This would have been to provide sales of comparable

properties adjusted to his property. Only one such sale was provided that being the sale of 812 Madden Rd. on June 23, 2004 for \$166,000 and it was not adjusted to the subject property. This sale did not assist the Taxpayer's argument since this property had been assessed by Adams County at \$179,095 at the time of the sale. This sale is of interest to the Commission since from the property record card for this property, Exhibit 11:1, it is noted that this property was the only property in the housing complex which was lowered for 2005 ( \$165,400 ). The value of all of the other comparable properties in the Lock Haven Townhouse complex were increased. The Commission finds that the Taxpayer did not provide clear and convincing evidence of the equalized taxable value of the subject property with the other property in Adams County.

The Taxpayer testified regarding his concern for his constitutional right of privacy. There was an insinuation in the testimony of the Taxpayer that his failure to allow an inspection by the appraiser for the county assessor had a bearing on his lack of success before the County Board of Equalization to his proposed and requested valuation. The Commission does not find evidence that the failure of the Taxpayer to allow an inspection by the County Assessor was relevant to its analysis of this appeal.

The glaring errors in the County's assessment process could have been corrected without an inspection; however, if an inspection were thought necessary the County could have applied to the Commission for an inspection order. This was not done.

The Commission has noted in its opinion certain inconsistencies in the valuation of the properties which it has reviewed. See spreadsheet of its evaluation of Exhibits 6 - 13 above. These inconsistencies are without explanation or justification. They include the mistake in the Property Type shown for the subject property and for 808 Madden Rd., as well as the unexplained

application of the depreciation for the comparable properties. Such inconsistencies give a basis for concern of the Taxpayer and the Commission. There was no testimony provided by the County Board to assist the Commission in its analysis of these inconsistencies. It is necessary for a Taxpayer to do more than criticize the County Board's valuation or methods. *Benyon versus Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W. 2d 857 (1938).

The Taxpayer must prove what the actual value or the equalized taxable value is for the subject property. *Garvey Elevators, Inc. v. Adams County Bd. Of Equalization*, 261 Neb. 130, 136, 621 N.W. 2d 518, 523 - 524 (2001).

County officials may take the view that it is their objective to "win" an appeal. The proceedings on an appeal are an opportunity to correct taxable valuation of a parcel so that the Taxpayer is not penalized by an erroneous determination of taxable value. County officials "win" when taxable value is correctly determined based on all the relevant information that could be made available to the Commission.

The Commission finds that the Taxpayer did not offer clear and convincing evidence of actual or equalized taxable value and the Commission is unable to grant relief.

## **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	\$ 16,235.00
Improvement value	<u>\$148,495.00</u>
Total value	<u><u>\$164,730.00.</u></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 October 4, 2006.

**Signed and Sealed.** October 4, 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

**SEAL**

\_\_\_\_\_  
William C. Warnes, Commissioner

**STATEMENT OF APPEAL RIGHTS**

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.

