

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

KENNETH E. CRAIG,	)	
	)	
Appellant,	)	Case No 05R-384
	)	
v.	)	DECISION AND ORDER AFFIRMING
	)	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 Kenneth E. Craig 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 Wickersham presided at the hearing.

Kenneth E. Craig, ("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 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.  
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, Lochland East Sub. Section 30, Township 8, Range 9, 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, Lochland East Sub. Section 30, Township 8, Range 9, Adams County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 42,000.00	\$ In total	\$ 42,000.00
Improvement	\$317,625.00	\$ In total	\$309,855.00
Total	\$359,625.00	\$245,000.00	\$351,855.00

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 12:00 p.m. CDST.

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	\$ 42,000.00
Improvement value	<u>\$309,855.00</u>
Total value	<u>\$351,855.00.</u>

**II.  
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. "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).

### III. DISCUSSION

The subject property is a 42,000 square foot improved parcel. (E2:5). Improvements on the parcel are a 2,961 square foot residence built in 1994 and a yard shed. (E2:5).

The Taxpayer testified that he thought the subject property had an actual value as January 1, 2005, of something under \$300,000.00. The Taxpayer reached that conclusion based on the sale of property he believed was comparable to the subject property. The Commission's order for hearing specifically required in paragraph 13 that any party wishing to offer evidence of comparable properties provide as part of the evidence a property record file from the county assessor's office. "Comparable properties" share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation*, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, p. 98. When using "comparables" to determine value, similarities and differences between the subject property and the comparables must be recognized. *Property Assessment Valuation*, 2<sup>nd</sup> Ed., 1996, p.103. Property record files for comparables were not produced by the Taxpayer as required by the Commission's order for hearing. Production of the property record file for a proposed comparable allows the Commission to evaluate comparability of various characteristics of the property as determined for assessment purposes. The testimony of a Taxpayer unsupported by required records concerning a property claimed to be comparable is not clear and convincing evidence of actual value.

The Commission's order for hearing requires the County to produce the property record file for the subject property. The required content of a property record file is set out in rules

and regulations of the property tax administrator as: the property record card, a picture of the improvements or main structures if applicable, a sketch of the improvements or main structures if applicable, a ground plan or aerial photograph if there are multiple improvements in addition to the main structures if applicable, school district codes as prescribed by the Department of Property Assessment and Taxation, four or more prior years history of the final assessed value of land and improvements, a complete history of each incremental adjustment or change made within an assessment year to the assessed value of the parcel recorded in the file, including the nature of the change and an indication of assessment body or official ordering the change and other information. 350 Neb. Admin. Code, ch 10 §004.01B (03/04). The County Assessor on the Property Valuation Protest ("Form 422"), has certified to the county board of equalization that a copy of that portion of the property record file which substantiates the calculation of the protested value is maintained in the assessor's office in electronic or paper form. (E1:2). The County Assessor recommended a change in actual value on review of the Taxpayer's protest. (E1:1). The Adams County Board of Equalization adopted the assessor's recommendation. (E1:1). Documents produced by the County do not include any information that supports calculation of the value protested by the Taxpayer. While that information may not be a required part of the property record file, it is information the County is required to maintain. See. Neb. Rev. Stat. §77-1502 (4) (Supp. 2005). Prospectively the Commission will alter its order for hearing or enter other orders to insure that information in the County records pertaining to valuation of a subject property is produced without resort to discovery by a party.

The property record card for the subject property indicates that taxable value of the subject property as determined by the assessor was \$359,625.00. (E2:1). The Form 422 filed

by the Taxpayer indicates that he believed the taxable value determined by the assessor was \$355,625.00. The Taxpayer testified that the taxable value he placed on the Form 422 was the value stated on the notice of change in value received from the assessor. Without the notice sent to the Taxpayer or the documentation required to be maintained pursuant to Neb. Rev. Stat. 77-1502 (4) (Supp 2005), the Commission cannot determine whether the Taxpayer misread the notice or if it was in fact erroneous. Assuming without deciding that the notice was erroneous such an error voids an increase in valuation from the prior year. See. *Rosenberry v. Douglas County*, 123 Neb. 803, 244 N.W. 398 (1932). In this instance however any error in the notice was waived by filing a protest. *Gamboni v. County of Otoe*, 159 Neb. 417, 67 N.W.2d 489 (1954), *overruled in part on other grounds*, *Hansen v. County of Lincoln*, 188 Neb. 461, 197 N.W.2d 651 (1972).

The decision of the County board should be affirmed.

#### IV 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.

**V.  
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	\$ 42,000.00
Improvement value	<u>\$309,855.00</u>
Total value	<u><u>\$351,855.00.</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

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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.**