

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

ROGER L. RUPP, TRUSTEE, ROGER L.	)	
RUPP REVOCABLE TRUST,	)	
	)	Case No 06R-017
Appellant,	)	
	)	DECISION AND ORDER AFFIRMING
v.	)	THE DECISION OF THE DAWSON
	)	COUNTY BOARD OF EQUALIZATION
DAWSON COUNTY BOARD OF	)	
EQUALIZATION,	)	
	)	
Appellee.	)	

The above-captioned case was called for a hearing on the merits of an appeal by Roger L. Rupp, Trustee, Roger L. Rupp Revocable Trust ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Holiday Inn Express, 2605 Plum Creek Parkway, Lexington, Nebraska, on April 3, 2007, pursuant to an Order for Hearing and Notice of Hearing issued January 17, 2007. Commissioners Wickersham, Warnes, and Lore were present. Commissioner Wickersham presided at the hearing.

Roger L. Rupp, Trustee of Roger L. Rupp Revocable Trust, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Kurt R. McBride, a Deputy County Attorney for Dawson County, Nebraska, appeared as legal counsel for the Dawson County Board of Equalization ("the County Board").

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

The Commission is required by Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006) 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 as of January 1, 2006, 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, 2006?

**II.  
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above captioned appeal to maintain the appeal.
2. The parcel of real property described below is the ("subject property").
3. Actual value of the subject property placed on the assessment roll as of January 1, 2006, ("the assessment date") by the Dawson County Assessor, value as proposed in a timely protest, and actual value as determined by the County Board is shown in the following table:

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Description: Leasehold interest and Improvements Lot 27, North Shore, Johnson Lake, Dawson County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 50,000.00	\$	\$ 50,000.00
Improvement	\$146,000.00	\$	\$146,000.00
Total	\$196,000.00	\$180,000.00	\$196,000.00

4. An appeal of the County Board's decision was filed with the Commission.
5. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
6. An Amended Order for Hearing and Notice of Hearing issued on January 17, 2007, set a hearing of the appeal for April 3, 2007, at 12:00 p.m. CDST.
7. 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.
8. Actual value of the subject property as of the assessment date for the tax year 2006 is:

Land value	\$ 50,000.00
Improvement value	<u>\$146,000.00</u>
Total value	<u>\$196,000.00.</u>

### III. APPLICABLE LAW

1. Subject matter jurisdiction of the Commission in this appeal is over 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. “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).
3. 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).
4. 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).

5. “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).
6. 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).
7. 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. 2006).
8. 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).
9. 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).
10. 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)

11. The Commission can grant relief only if there is clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005).
12. "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).
13. 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).
14. 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).
15. "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. ANALYSIS**

The subject property in this appeal is located on Johnson Lake in Dawson County and has two components which are improvements on leased land and the leasehold interest. The

leased fee is held by Central Public Power and Irrigation District. (E14). Assessment of subject property is determined by Neb. Rev. Stat. §77-1374 (Revised Reissue 2003).

The Taxpayer testified that the determination of actual value by the County Board was incorrect because values assigned to various leasehold interests at Johnson Lake did not take into account feet of lake front footage, total square feet in the leasehold, depth of water, location on the lake, and other factors. The Taxpayer further testified that in his opinion the County Assessor's methodology benefitted large lot owners and was detrimental to smaller lot owners because the per square foot value of a large lot would be less in comparison of the per square foot value of a smaller lot. The Taxpayer contended that if the value of the leased fee was not correctly determined that the total value for a parcel could not be correct. The Taxpayer also testified that if the values assigned to leased fees were represented by an average value regardless of distinguishing characteristics such as size then average values should also be determined for improvements.

The Taxpayer testified that the subject property had a defective septic sewer system that could not be replaced. The Taxpayer also testified that a Sanitary Improvement District had been formed and that the subject property would be connected at sometime to a community sewer system. The Taxpayer also testified that the construction and operation of the sewer system were creating uncertainty because costs weren't known.

The Taxpayer produced no evidence which would allow the Commission to make adjustments to value based on either total square feet in the leasehold, the lake front footage size of the lot or other factors such as the uncertain costs of the community sewer system. Without evidence on which to base adjustments, it is impossible to make them even if the

rational for making an adjustment is compelling. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981). Likewise the Taxpayer presented no evidence in support of his opinion that actual value of the subject property as of January 1, 2006, was \$180,000.00. The Commission is unable to make a determination of value based on an opinion that is not supported by sales of comparable parcels or some other basis for the opinion.

The Commission is unable, for reasons stated above, to determine that the decision of the County Board of Equalization as of the assessment date was unreasonable or arbitrary.

**V.  
CONCLUSIONS OF LAW**

1. The Commission has subject matter jurisdiction in this appeal.
2. The Commission has jurisdiction over the parties to this appeal.
3. 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, 2006, is affirmed.
2. Actual value of the subject property for the tax year 2006 is:



Land value           \$ 50,000.00  
Improvement value \$146,000.00  
Total value           \$196,000.00.

3. This decision, if no appeal is timely filed, shall be certified to the Dawson County Treasurer, and the Dawson County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).
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 2006.
7. This order is effective for purposes of appeal April 16, 2007.

**Signed and Sealed.** April 16, 2007.

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Wm. R. Wickersham, Commissioner

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Susan S. Lore, 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 (CUM. SUPP. 2006). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.**