

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

CARL D. BULLER,)	
)	
Appellant,)	Case No 06R-129
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE GREELEY
GREELEY 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 Carl D. Buller ("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 2, 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.

Carl D. Buller, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

James R. Swanson, County Attorney for Greeley County, Nebraska, appeared as legal counsel for the Greeley 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 Greeley 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. 06R-129

Description: All of Block 2, Ross Addition, Scotia, Greeley County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 3,380.00	\$ 3,100.00	\$ 3,380.00
Improvement	\$124,865.00	\$79,000.00	\$129,180.00
Total	\$128,245.00	\$82,100.00	\$132,560.00

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 Order for Hearing and Notice of Hearing issued on January 17, 2007, set a hearing of the appeal for April 2, 2007, at 4:00 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	\$ 3,380.00
Improvement value	<u>\$129,180.00</u>
Total value	<u>\$132,560.00.</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 is an improved residential parcel of 1.57 acres. The principal improvement is a 2,016 square foot 1½ story single family residence built in 2000. (E20:11). The residence has a 980 square foot attached garage and a 1,344 square foot basement with 512 square feet of partition finish. (E20:12).

The Taxpayer contended in part that residential parcels in Scotia tended to be overvalued in comparison to a comparable residence in Greeley or Spalding. The Taxpayer presented Exhibits 12 and 13 in support of his contention. Both exhibits describe residential parcels that sold for less than their assessed value. A larger sample of sales is found in the 2006

Reports and Opinions of the Property Tax Administrator for Greeley County. In the period of July 1, 2003 to June 30, 2005 10 sales of residential property occurred in Scotia. 2006 Reports and Opinions of the Property Tax Administrator for Greeley County. The median assessment to sale ratio of those parcels was 80.84. *Id* at pg 43. The assessment to sale ratio is obtained by dividing the assessed value of a parcel by its sale price. If the ratio is less than 1 the parcel had an assessed value lower than its sale price. The sale of the parcel described in Exhibit 13 was not included in the Property Tax Administrator's study because it occurred on May 12, 2003. (E13:2). The sale of the property described in Exhibit 12 was not included in the Property Tax Administrator's study because that parcel is outside the Scotia municipal limits. (E12:1). The evidence does not support the Taxpayer's contention that residences in Scotia are generally assessed for more than their actual value.

The Taxpayer asserted that the assessed value of a residential parcel described in Exhibit 15 supported his contention that the subject property should have a lower assessed value. The Taxpayer presented evidence of the taxable "assessed" value of various parcels one of which was the subject property. The Taxpayer contends that the actual or fair market value of the subject property should be determined based on the taxable or "assessed" value per square foot of the other parcels. A Taxpayer wishing to use taxable "assessed" values to prove actual or fair market value has three tests to meet: proof that the method is a professionally approved mass or fee appraisal approach; appropriate application of the approach, and reliability of the evidence.

Methods through which a determination of actual value may be made for mass appraisal and assessment purposes are identified in Nebraska Statutes and include the sales comparison

approach, the income approach, the cost approach and other professionally accepted mass appraisal methods. Neb. Rev. Stat. §77-112 (Reissue 2003). A comparison of assessed values is not identified in the Nebraska Statutes as an accepted approach for a determination of actual value for purposes of mass appraisal. *Id.* Because the method is not identified in statute proof of its acceptance as a appraisal method would have to be produced. *Id.* No evidence has been presented to the Commission that comparison of assessed values is a professionally accepted mass or fee appraisal approach.

In the sales comparison approach, a sale price is an indication of actual value for a sold property but has to be adjusted to account for differences between properties to become an indicator of market value for another property. *The Appraisal of Real Estate*, Twelfth Edition, Appraisal Institute, Chs 17, 18, 19, (2001). If the “taxable ‘assessed’ value comparison approach” was shown to be a professionally accepted method of appraisal, an analysis of differences and adjustments to the taxable “assessed” value of comparison properties would be necessary to obtain an indication of value for a subject property. There are significant differences between the parcel described in Exhibit 15 and the subject property. As derived from Exhibits 15 and 18 those differences are: 6 years of age, a 1404 square feet of above ground living space compared to 2,016, a 484 square foot garage as opposed to a 980 square foot garage, and a 1140 square foot basement with 912 square feet of recreational finish compared to a 1,344 square foot basement with 512 square feet of partition finish. Other differences are apparent even with the limited information available in Exhibit 15. No adjustments or analysis of adjustments necessary to compensate for differences between the subject property and the taxable “assessed” values of other parcels was presented

The Taxpayer also asserted that the increase in valuation for the tax year 2006 from tax year 2005 cannot be justified. A prior year's valuation is not relevant. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201,206 (1988). If the base for a calculation is not relevant results of the calculation cannot be relevant. An assertion that taxable value for a subsequent year should be determined as a percentage of the prior year's taxable value is therefore not persuasive. In addition the evidence in this appeal is that the prior year's valuation could not have been correct because it did not take into account the 512 square feet of partition finish in the basement. Partition finish includes a covering of the basement floor, a finished ceiling and walls that are insulated and dry walled. In short that area is indistinguishable from above ground living space. Its calculated contribution to value contributed to the change in value which the Taxpayer did not believe was supportable.

Finally the Taxpayer noted that the County Board, after hearing the protest increased value without further notice due to information it had received from the Taxpayer concerning the partition finished basement. By filing a protest the Taxpayer waived any requirement that the County Board give additional notice if it wished to consider a higher value. Neb. Rev. Stat. 77-1506.01 (Reissue 2006).

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	\$ 3,380.00
Improvement value	<u>\$129,180.00</u>
Total value	<u><u>\$132,560.00.</u></u>
3. This decision, if no appeal is timely filed, shall be certified to the Greeley County Treasurer, and the Greeley 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 17, 2007.

Signed and Sealed. April 17, 2007.

Wm. R. Wickersham, Commissioner

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