

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

WAYNE L. AND SHERRI J. PALMER,)	
TRUSTEES, WAYNE L. PALMER TRUST)	
AND SHERRI J. PALMER TRUST,)	Case No 06C-050
)	
Appellant,)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE CUSTER
v.)	COUNTY BOARD OF EQUALIZATION
)	
CUSTER COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Wayne L. and Sherri J. Palmer, Trustees, Wayne L. Palmer Trust and Sherri J. Palmer Trust ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Holiday Inn Express, 508 2nd Avenue, Kearney, NE, Nebraska, on August 14, 2007, pursuant to an Order for Hearing and Notice of Hearing issued January 18, 2007. Commissioners Wickersham, Warnes, and Salmon were present. Commissioner Warnes presided at the hearing.

Wayne L. and Sherri J. Palmer, Trustees of Wayne L. Palmer Trust and Sherri J. Palmer Trust, were present at the hearing. No one appeared as legal counsel for the Taxpayer.

Glenn A. Clark, Deputy County Attorney for Custer County, Nebraska, appeared as legal counsel for the Custer 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 Taxpayers have 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:

Whether the decision of the County Board determining actual value of the subject property is unreasonable or arbitrary; and

The actual value of the subject property on January 1, 2006.

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayers have a sufficient interest in the outcome of the above captioned appeal to maintain the appeal.
2. The parcel of real property to which this appeal pertains is described as ANSLEY VILLAGE: AF PINKLEY ADD: PART BLKS 5,6 & 7, in Custer County, Nebraska, ("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 Custer 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: ANSLEY VILLAGE: AF PINKLEY ADD: PART BLKS 5,6 & 7, Custer County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 1,402.00	\$ 1,000.00	\$1,402.00
Improvement	\$ 66,044.00	\$ 40,325.00	\$6,044.00
Total	\$ 67,446.00	\$ 41,325.00	\$67,446.00

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 18, 2007, set a hearing of the appeal for August 14, 2007, at 10:00 a.m. CST.
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	\$ 1,402.00
Improvement value	\$ <u>66,044.00</u>
Total value	\$ <u>67,446.00.</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 (8) (Cum. Supp. 2006), and e.g. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
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).
16. The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998).

17. A Taxpayer, who only produced evidence that was aimed at discrediting valuation methods utilized by county assessor, failed to meet burden of proving that value of property was not fairly and proportionately equalized or that valuation placed upon property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).
18. Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981).

IV. ANALYSIS

This is an appeal of the valuation of the subject property for the year 2006. The improvement on the subject property is a 5,400 square foot mini storage facility. The subject property includes 38,697 square feet of land (.89 acre).

Testimony of the Taxpayer was that he purchased the land component of the subject property for \$1,000 in August of 2004. The improvement to the subject property was built in 2004 for a total cost of \$44,000. The Taxpayer testified that his construction cost is the basis for his belief that the subject property's actual value as of January 1, 2006 "is no more than \$50,000".

The County's Appraiser testified that he had used both the income approach, Exhibit 10:4, and the sales comparison approach, Exhibit 10:5 as valuation approaches to value the subject property. His determination of value using the income approach was \$67,084.

Using the sales comparison approach his determination of value was \$67,500. The County Appraiser testified that he examined the sales of other parcels which had a mini storage improvement. These parcels are listed on Exhibit 13:2. His testimony was that the market value per square foot of these parcels had been derived from sales of comparable properties in Custer County and the surrounding counties. It is from Exhibit 13:2 that the valuation of \$12.50/square foot using the sales comparison approach is determined by the County's Appraiser.

The County Assessor testified that she used the valuations determined by the County Appraiser and adjusted factors in the CAMA system related to the cost approach to produce a cost approach value equal to the appraisers determination. The Assessor's testimony was that her assessed valuation of \$67,446 was calculated using the Appraiser's input, in other words, that she matched the valuation using the CAMA system to that of the Appraiser's determination. One of the principal factors she used to adjust the assessed valuation using the cost approach to that of the Appraiser's determination was the amount of depreciation given to the subject property.

The Taxpayer provided as the most comparable parcel to the subject property that parcel shown both on Exhibits 2 and 12. The Taxpayer alleges that this parcel is comparable to the subject property since it was built the same year as the subject property and yet its assessed valuation for 2006 is less. In addition, the depreciation used for this comparable property (82%) differs from the depreciation used for the subject property (36%). The County's Appraiser testified that the comparable parcel shown on Exhibits 2 and 12 is not comparable to the subject property in that it is a "multi use property". The comparable parcel has on the same

property a mini storage facility of 5,000 square feet, an automatic car wash of 504 square feet, a warehouse for storage of 1,600 square feet and a service repair garage of 2,048 square feet. The multi use made of this comparable property is a substantial factor in differences between the subject property and the mini storage improvement located on the alleged comparable property.

The County Appraiser testified that his valuation of the mini storage on the comparable property, Exhibit 12:8 was \$11.68/square foot. This figure compares to the \$12.50/square foot determined for the subject property as shown on Exhibit 13:2.

The Taxpayer did not provide any evidence of actual value for any of the comparable properties. The Commission finds that the Taxpayer has not shown by clear and convincing evidence that the County Board of Equalization was arbitrary or unreasonable. The appeal of the Taxpayer is denied.

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 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 \$ 1,402.00

Improvement value \$ 66,044.00

Total value \$ 67,446.00.

3. This decision, if no appeal is timely filed, shall be certified to the Custer County Treasurer, and the Custer 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 on August 31, 2007.

Signed and Sealed. August 31, 2007.

Wm. R. Wickersham, Commissioner

Nancy J. Salmon, Commissioner

Seal

William C. Warnes, Commissioner

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.