

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

ANNETTE REGENT,)	
)	
Appellant,)	Case No 06R-072
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE DOUGLAS
DOUGLAS 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 Annette Regent ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on July 16, 2007, pursuant to an Order for Hearing and Notice of Hearing issued April 10, 2007. Commissioners Wickersham, Warnes, and Sorensen were present. Commissioner Warnes presided at the hearing.

Annette Regent, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Thomas S. Barrett, a Deputy County Attorney for Douglas County, Nebraska, appeared as legal counsel for the Douglas 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:

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.

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2006, is not equalized with the taxable value of other real property. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining equalized taxable value of the subject property is unreasonable or arbitrary;

Whether the equalized taxable value of the subject property was determined by the County Board in a manner and an amount that is uniform and proportionate as required by Nebraska's Constitution in Article VIII §1; and

The equalized taxable 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 to which this appeal pertains is described as OKAHOMA - S E ROGERS- LOT 55, BLOCK 0, N 30 FT SUB 2 & S 30 N 212 FT LT 22, J E RILEYS SUB, OMAHA, DOUGLAS 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 Douglas 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: OKAHOMA - S E ROGERS- LOT 55, BLOCK 0 , N 30 FT SUB 2 & S 30 N 212 FT LT 22, J E RILEYS SUB, OMAHA, DOUGLAS COUNTY, NEBRASKA.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 3,000.00	\$	\$ 3,000.00
Improvement	\$52,700.00	\$	\$52,700.00
Total	\$55,700.00	\$35,000.00	\$55,700.00

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 April 10, 2007, set a hearing of the appeal for July 16, 2007, at 3:00 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	\$ 3,000.00
Improvement value	<u>\$52,700.00</u>
Total value	<u>\$55,700.00.</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. “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. Const.*, art. VIII, §1
9. 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).
10. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity. *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

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. In the evaluation of real property for tax purposes, where buildings and improvements are taxable as a part of the real estate, the critical issue is the actual value of the entire property, not the proportion of that value which is allocated to the land or to the buildings and improvements by the appraiser. *Bumgarner v. Valley County*, 208 Neb. 361, 303 N.W.2d 307 (1981).
14. If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgement. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity. *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).
15. 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).

16. 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).
17. 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)
18. 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).
19. "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).
20. 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).

21. 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).
22. “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).
23. 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).
24. 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).
25. 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 appeal presents the issues of actual value and equalized taxable value for the tax year 2006. The subject property is an improved residential parcel located within the city of Omaha, Nebraska. The Taxpayer's principal basis for relief rests with the fact that the subject property had experienced "flooding" due to a city water main break on July 21, 2002.

The property record file for the subject property was provided by the County. (Exhibit 5:1-6) The improved component of the subject property consists of a 2 story residence of 1,496 residential square feet. (Exhibit 5:1). The condition and quality of the improvement is rated as "Fair". (Exhibit 5:1). The residence was built in 1890 and has 902 square feet of unfinished basement. (Exhibit 5:3). The second floor of the residence has 594 square feet. (Exhibit 5:3).

A. VALUATION ISSUE

The Taxpayer testified that on July 21, 2002, water flooded into the basement of the residence on the subject property to a depth of almost 8 feet in height. As a result of this flooding she was forced to evacuate the property and was provided temporary shelter by the American Red Cross. The Taxpayer testified that there was extensive damage both to the residence's electrical and heating systems of the residence as a result of the flooding. Further testimony by the Taxpayer concerned water damage to the basement walls and settling of the front porch of the residence.

The Taxpayer alleges that there is still substantial damage to the residence on the subject property as a direct result of the 2002 flooding. The Taxpayer testified that she had repaired both the electrical service and heating system by January 1, 2006. She alleges that damage still

remains to the basement walls and the front porch. The cost to remediate damage alleged by the Taxpayer existing on January 1, 2006, was not quantified by the Taxpayer.

The evidence presented by the Taxpayer is that she does not believe the County has inspected the subject property since the July 21, 2002, incident. Testimony by the County's appraiser was that he had tried to inspect the property on at least two occasions, April and May of 2007, and left cards at the subject property requesting a return call from the Taxpayer. (Exhibit 4:2), but he did not receive a response from the Taxpayer.

The County's appraiser testified further that he made an exterior inspection of the subject property on those dates at which he left his business cards, but was unable to enter the back yard, as the gates were padlocked to the side yards. From this limited exterior inspection the County's appraiser observed "discoloration" several inches above the ground level on the foundation and he did observe "cracking and settling" of the front porch.

The Taxpayer testified that she did not agree that the parcels provided by the County as comparables were truly comparable. The County's parcels offered as comparables are shown on Exhibit 4:4. The Commission notes that the County did not use these parcels to directly determine actual or equalized taxable value of the subject property since there are no adjustments to value that would have been made to compare the parcels to the subject property.

Testimony by the County appraiser was that the parcels offered as comparables were only used as a "test" to determine whether the valuation determined as shown in Exhibit 5 was reasonable in light of sales of parcels offered as comparables.

The County valued the subject property as shown on Exhibit 5:4. The Taxpayer confirmed that the attributes of the subject property were correct. (Exhibit 5:1) The County's taxable value of the subject property using the approach shown in Exhibit 5 was \$55,571.

The Taxpayer provided rebuttal evidence of parcels which she felt were comparable to the subject property. These parcels are shown on Exhibits 9, 10 and 11. The County's appraiser noted differences between these parcels to include observations that the parcel shown in Exhibit 10 is rated as being in "poor" condition. Also, the residential living area varies between these parcels and the subject property by significant amounts - the subject property having 1,496 square feet of above grade residential living area while the suggested comparable parcels have 1,750 square feet, (Exhibit 9:1), 1,946 square feet, (Exhibit 10:1) and 965 square feet, (Exhibit 11:1). Testimony by the Taxpayer was that she had not taken into account the differences in the parcels she submitted as comparables.

The Commission has analyzed the parcels offered by the County as comparables, (Exhibit 4:4), with those parcels offered by the Taxpayer as comparables, (Exhibits 9, 10 and 11). The Commission finds that the County's parcel, comp 2, 3005 S 16 St, (Exhibit 6), is reasonably comparable to the subject property. The sale price of this property on 2/21/2003 was \$74,000 which is \$53.16 actual value/square foot. (Exhibit 4:4). This sale/square foot is to be compared to the \$37.21 actual value/square foot for the subject property. (Exhibit 4:4).

The parcel shown on Exhibit 10 is not found to be comparable for reason that its condition is "poor", Exhibit 10:2, versus the "fair" condition of the subject property, Exhibit 5:1. That parcel shown by Exhibit 11 is not found to be comparable since it is of a much smaller size, 965 square feet, Exhibit 11:2, versus the 1,496 square feet of the subject property.

The Commission finds that Taxpayer's parcel, Exhibit 9, is reasonably comparable to the subject property. The parcel shown in Exhibit 9 sold for \$48,500 on 11/21/2005. (Exhibit 9:1) which is a \$27.71 sales price/square foot. The two parcels, which the Commission finds most similar to the subject property, County's comparable parcel #2, Exhibit 4:4 and Exhibit 9 have sale prices/square foot which "bracket" the actual value/square foot of the subject property. From the comparison of the parcels described as comp #2 in Exhibit 4 and the parcel described in Exhibit 9, the Commission finds that the County was not unreasonable or arbitrary in its decision determining actual value of the subject property.

The Taxpayer has failed to provide clear and convincing evidence that the decision of the County Board was arbitrary or unreasonable and the Commission cannot grant relief.

B.
EQUALIZATION ISSUE

The Taxpayer presented an equalization issue as part of this appeal. "Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that no one part is compelled to pay a disproportionate share of the tax. Where it is impossible to secure both the standards of the true value of a property for taxation and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. However, the burden is on the taxpayer to show by clear and convincing evidence that the valuation placed upon the taxpayer's property

when compared with valuation placed on other similar property is grossly excessive.”

Cabela's Inc. v. Cheyenne County Bd. of Equalization, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).

“Mere errors of judgement do not sustain a claim of discrimination. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.” *Newman v County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959), p. 4. “The right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.” *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, does not obtain.” *Grainger Bros.Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 580, 144 N.W.2d 161, 169 (1966).

The Taxpayer has objected to the comparables offered by the County and its assessment practices. It is however, necessary for the Taxpayer to do more than criticize or question the County’s Assessment practices. “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 her property was not fairly and proportionately equalized or that valuation placed upon her 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).

The Taxpayer presented parcels as comparables, Exhibits 9, 10 and 11; however, there is no evidence that any comparables offered by the County or the Taxpayer are not assessed at 100% of actual value. No evidence of actual value was provided by the Taxpayer as to any of her suggested comparable parcels. The Taxpayer did offer her opinion of actual value of the subject property which was \$30,000. The Commission notes that her opinion of taxable value on her filed protest, Form 422, Exhibit 7:2, was \$35,000.

As discussed above, the evidence in this appeal is that the subject property is assessed at 100 % of actual value.

The Taxpayer has failed to provide clear and convincing evidence that the decision of the County Board was arbitrary or unreasonable and the Commission cannot grant relief.

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	\$ 3,000.00
Improvement value	<u>\$52,700.00</u>
Total value	<u><u>\$55,700.00.</u></u>
3. This decision, if no appeal is timely filed, shall be certified to the Douglas County Treasurer, and the Douglas 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 July 31, 2007.

Signed and Sealed. July 31, 2007.

Wm. R. Wickersham, Commissioner

Ruth A. Sorensen, 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.