

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

RONALD A. NEWINGHAM,)	
)	
Appellant,)	Case No 06R-381
)	
v.)	DECISION AND ORDER VACATING
)	AND REVERSING THE DECISION OF
CASS COUNTY BOARD OF)	THE CASS COUNTY BOARD OF
EQUALIZATION,)	EQUALIZATION
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Ronald A. Newingham ("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 November 30, 2007, pursuant to an Order for Hearing and Notice of Hearing issued May 18, 2007. Commissioners Wickersham, Warnes, and Salmon were present. Commissioner Wickersham presided at the hearing.

Ronald A. Newingham was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Nathan B. Cox, County Attorney for Cass County, Nebraska, appeared as legal counsel for the Cass 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.

**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 in the table below ("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 Cass County Assessor, value as proposed in a timely protest, and actual value as determined by the County Board is shown in the following

table:

Description: Lot 12R Indian Hills Addition Louisville, Cass County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 61,038.00	\$ 35,000.00	\$ 61,038.00
Improvement	\$178,000.00	\$136,988.00	\$176,260.00
Total	\$239,038.00	\$171,988.00	\$237,298.00

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 May 18, 2007, set a hearing of the appeal for November 30, 2007, at 1:00CST.
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	\$ 60,282.00
Improvement value	<u>\$148,175.00</u>
Total value	<u>\$208,457.00.</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 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. *City of York v. York County Bd. Of Equalization*, 266 Neb. 297, 64 N.W.2d 445 (2003).

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).
10. The presumption remains until there is competent to the contrary is presented at which point the presumption disappears. From that point forward, the reasonableness of the valuation fixed by the County Board becomes one of fact based on all of the evidence presented. *Garvey Elevators, Inc. v. Adams County Bd. Of Equalization*, 261 Neb. 130, 621 N.W.2d 518 (2001).
11. The Commission can grant relief only if the evidence shows that the action of the County Board was unreasonable or arbitrary. See, Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2006).
12. Proof that the decision of the county board of was arbitrary or unreasonable must be clear and convincing evidence. See, e.g. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
13. "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).

14. 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).
15. 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).
16. "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).
17. 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).
18. 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).
19. 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

The subject property is an improved residential parcel. The residence on the parcel was constructed in 1994. (E7:2).

During the hearing in this case it became apparent that the records of the Cass County Assessor regarding the subject property were inaccurate. During an extended recess the subject property was inspected by the Cass County Assessor and an appraiser for the County. As a result of the inspection and a reconsideration of factors affecting a determination of actual value the County Assessor opined that actual value of the subject property as of January 1, 2006, was \$208,457.00. (E7:2). The presumption in favor of the County Board was extinguished and the reasonableness of actual value of the subject property as established by the County Board became one of fact. The County Board's determination of actual value was based on part on the assumption that an attached garage and a detached garage was on the parcel. (E3:4). The County Assessors inspection established that a only a detached garage is on the subject property. The County Board's determination of actual value was unreasonable or arbitrary.

The Taxpayer testified that actual value of the subject property as of January 1, 2006, was \$187,000.00. The Taxpayer arrived at that opinion based on a contribution to value of the land component of \$50,000.00 and a contribution to value of the improvements of \$137,000.00.

The Taxpayer testified that the contribution to value of the land component should be based on 4% appreciation each year since its purchase in 1993 or \$35,000.00 as shown on Exhibit 1 at page 2. The Taxpayer also testified that truthfully the contribution to value should be higher than stated in Exhibit 1 and that he believed the land to be worth \$50,000.00.

The Taxpayer testified that he believed that the contribution to value of the improvements should be \$137,000.00. That value was derived from the costs of construction in 1993 increased by 4% per year less an allowance for construction as calculated in 1994 increased by 4% per year.

A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes. Neb. Rev. Stat. §77-112 (Reissue 2003). The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods. *Id.* 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 professional acceptance as an accepted appraisal approach would have to be produced. *Id.* No evidence has been presented to the Commission that increasing base amounts by a fixed percentage over a period of 12 years is accepted appraisal approach.

Actual value as determined by the County Assessor was based on use of the cost approach. (E7:2). The Cost Approach includes six steps: “(1) Estimate the land (site) value as if vacant and available for development to its highest and best use; (2) Estimate the total cost new of the improvements as of the appraisal date, including direct costs, indirect costs, and entrepreneurial profit from market analysis; (3) Estimate the total amount of accrued depreciation attributable to physical deterioration, functional obsolescence, and external (economic) obsolescence; (4) Subtract the total amount of accrued depreciation from the total cost new of the primary improvements to arrive at the depreciated cost of improvements; (5)

Estimate the total cost new of any accessory improvements and site improvements, then estimate and deduct all accrued depreciation from the total cost new of these improvements; (6) Add site value to the depreciated cost of the primary improvements, accessory improvements, and site improvements, to arrive at a value indication by the cost approach.” *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, pp. 128 - 129. Physical deterioration is the loss in value due to wear and tear in service and the disintegration of an improvement from the forces of nature. All man made objects begin a slow process of deterioration as soon as they are created. Among the most common causes of physical deterioration are wear and tear through use, breakage, negligent care, infestation of termites, dry rot, moisture, and the elements. *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, pp. 154. Functional obsolescence is the loss of value in a property improvement due to changes in style, taste, technology, needs and demands. Functional obsolescence exists where a property suffers from poor or inappropriate architecture, lack of modern equipment, wasteful floor plans, inappropriate room sizes, inadequate heating or cooling capacity, and so on. It is the ability of a structure to perform adequately the function for which it is currently used.” *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, pp. 154 - 155.

As required by rules and regulations of the Property Tax Administrator, cost tables developed by Marshall and Swift were used to calculate replacement cost new. (E7:2). The Commission notes that replacement cost new as calculated by the County Assessor, \$165,930.00, is less than the insured replacement cost of the improvements with a roof exclusion. (E3:5).

The Taxpayer testified that total depreciation as determined by the County Assessor should be increased from 11% to 21-26%. The Taxpayer testified that the amount of depreciation, recognizing that the residence was a modular home plus other adjustments, should produce an estimate of actual value of \$187,000.00.

The County Assessor testified that the deductions taken for physical depreciation were based on tables within the valuation system. The County Assessor testified that an allowance of 5% was made for functional depreciation with the concurrence of an appraiser who had inspected the subject property and a contract appraiser after a review and discussion of the subject properties attributes.

Actual value of the subject property as of January 1, 2006, is \$208,457.00 as determined by the County Assessor after inspection.

**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 vacated and reversed.
2. Actual value of the subject property for the tax year 2006 is:

Land value	\$ 60,282.00
Improvement value	<u>\$148,175.00</u>
Total value	<u><u>\$208,457.00.</u></u>
3. This decision, if no appeal is timely filed, shall be certified to the Cass County Treasurer, and the Cass 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 December 14, 2007.

Signed and Sealed. December 14, 2007.

Wm. R. Wickersham, Commissioner

Nancy J. Salmon, Commissioner

William C. Warnes, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.