

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

| | | |
|-----------------------|---|------------------------------|
| AVISHEK ROY, |) | |
| |) | |
| Appellant, |) | Case No 06R-312 |
| |) | |
| v. |) | DECISION AND ORDER AFFIRMING |
| |) | THE DECISION OF THE SARPY |
| SARPY 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 Avishek Roy ("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 February 13, 2007, pursuant to an Order for Hearing and Notice of Hearing issued December 4, 2006. Commissioners Wickersham, Warnes, and Hans were present. Commissioner Wickersham presided at the hearing.

Avishek Roy, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Nicole O'Keefe, a Deputy County Attorney for Sarpy County, Nebraska, appeared as legal counsel for the Sarpy 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 an interest, sufficient to maintain this appeal, in a parcel of real property described below. That parcel is the ("subject property").
2. Actual value of the subject property placed on the assessment roll as of January 1, 2006, ("the assessment date") by the Sarpy 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-312

Description: ILt 83 Castle Ridge, Bellevue, Sarpy County, Nebraska.

| | Assessor Notice Value | Taxpayer Protest Value | Board Determined Value |
|-------------|-----------------------|------------------------|------------------------|
| Land | \$ 26,000.00 | \$ 26,000.00 | \$ 26,000.00 |
| Improvement | \$213,419.00 | \$147,141.00 | \$208,370.00 |
| Total | \$239,419.00 | \$173,141.00 | \$234,370.00 |

3. An appeal of the County Board's decision was filed with the Commission.
4. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
5. An Amended Order for Hearing and Notice of Hearing issued on December 4, 2006, set a hearing of the appeal for February 13, 2007, at 9:00 a.m. CST.
6. 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.
7. Actual value of the subject property as of the assessment date for the tax year 2006 is:

| | |
|-------------------|----------------------|
| Land value | \$ 26,000.00 |
| Improvement value | <u>\$208,370.00</u> |
| Total value | <u>\$234,370.00.</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 lot. (E7:3). The residence on the lot is a 2,433 square foot 1½ story house with a full basement and attached two car garage. (E7:3).

The residence was built in 1997. (E7:2).

The Taxpayer purchased the subject property on November 23, 2005, for \$210,000. (E7:1). The Taxpayer testified that the price paid as of November 23, 2005, represented actual value of the subject property as of January 1, 2006, the assessment date at issue in this proceeding. It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value. *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 582 N.W.2d 631, (1998). If however, the evidence discloses the circumstances surrounding the sale and shows that it was an arm's length transaction between a

seller who was not under compulsion to sell and a buyer who was not compelled to buy, it should receive strong consideration.” *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982).

The Taxpayer testified that the subject property had been on the market for several months, was withdrawn from the market, and then returned. There is evidence that the subject property had been listed for \$249,900 prior to June 22, 2005. (E15:4). The listing price as of sale November 28, 2005, was \$220,000. (15:12). The listing at the time of purchase indicated that the asking price was a "fantastic price due to health issue of family member out-of -state". (E15:14). The Taxpayer sought to purchase the subject property because it meet a particular need of the Taxpayer's family. The Taxpayer's initial offer for purchase of the property was below the final purchase price and the final purchase price was below the listing price. The Taxpayer's offer was not based on an estimate of the subject property's actual value. The Taxpayer testified that a thorough inspection was not made of the subject property before an offer was made, that factors affecting its condition discovered after purchase indicate that actual value is less than the purchase price, and that handicapped accessible features of the residence detract its marketability. There is no evidence based on sales of comparable properties that the Taxpayer’s concerns are shared in the market place. The evidence is that the Taxpayer's purchase offer was not an informed offer and that the sale was influenced by the seller's need to sell for family reasons. Sale and purchase of the subject property in 2005 is not clear and convincing evidence of its actual value as of January 1, 2006, and the Taxpayer has not shown that the decision of the County Board 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 | \$ 26,000.00 |
| Improvement value | <u>\$208,370.00</u> |
| Total value | <u><u>\$234,370.00.</u></u> |
3. This decision, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer, and the Sarpy 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 February 22, 2007.

Signed and Sealed. February 22, 2007.

Wm. R. Wickersham, Commissioner

Robert L. Hans, 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.