

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

DAVID L. & CYNTHIA A. KALKWARF,)	
)	
Appellant,)	Case No 06R-384
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE SALINE
SALINE COUNTY BOARD OF)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	

**I.
STATEMENT OF FACTS**

The above-captioned case was called for a hearing on the merits of an appeal by David L. & Cynthia A. Kalkwarf ("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 January 16, 2007, pursuant to an Order for Hearing and Notice of Hearing issued November 16, 2006. Commissioners Wickersham, Warnes and Hans were present. Commissioner Warnes presided at the hearing.

David L. Kalkwarf, was present at the hearing. Bradley T. Kalkwarf appeared as legal counsel for the Taxpayer.

Tad D. Eickman, County Attorney for Saline County, Nebraska, appeared as legal counsel for the Saline County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits and heard testimony and Exhibits 1-4 and 7-39 were received. Exhibits 5, 6 and 40 were not admitted into evidence.

Taxpayer testified on his behalf and called as his witnesses the Saline County Assessor, Georgene Eggebraaten and Jon C. Fritz, Appraiser for Saline County. The County Board did not call any witnesses.

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.

II. ISSUES

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:

Was the decision of the County Board determining taxable value of the subject property unreasonable or arbitrary?

Was taxable value of the subject property 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?

What was the equalized taxable value of the subject property on January 1, 2006?

**III.
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 Saline 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: W 1/2 of LOT 5, ALL OF LOT 6, BLOCK 7 WILBER'S THIRD ADDITION, WILBER CITY, Saline County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
Improvement	\$121,280.00	\$ 86,800.00	\$121,280.00
Total	\$131,280.00	\$ 96,800.00	\$131,280.00

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 Order for Hearing and Notice of Hearing issued on November 16, 2006, set a hearing of the appeal for January 16, 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	\$ 10,000.00
Improvement value	<u>\$121,280.00</u>
Total value	<u>\$131,280.00.</u>

**VI.
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. 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).
14. 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).
15. 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)

16. The Commission can grant relief only if the Taxpayer establishes by clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005).
17. "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).
18. 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).
19. 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).

V. ANALYSIS

Taxpayer testified that his appeal is one of equalization (Exhibit 1:1) and that it was the only issue presented to the Saline County Board of Equalization at the time of the protest hearing. Taxpayer's property is located at 623 West Hickory, Wilber, Nebraska. It is a one-story residential property with 1,496 square feet built in 1925 (E2:2). Improvements to the property include a three stall garage containing 768 square feet (E2:2).

Taxpayer relied on only one comparable property in support of his appeal despite the fact that he provided the property record cards for other properties, Exhibit 4:1 to 4:4. The

comparable property chosen by Taxpayer in support of his appeal was that of his neighbor's located at 820 West Hickory. The property record file for this property is Exhibit 3:1-2.

Taxpayer testified that his property and the property of his neighbor were similar and comparable and yet, his property was valued per square foot at \$81 and his neighbor's property was valued at a per square value of \$58. This testimony succinctly expressed by Taxpayer was his primary evidence of non-uniform valuation.

There was no testimony regarding actual value of the subject property or the offered comparable. The 2006 assessed valuation for the subject property and property of the neighbor was evidenced by the property record files. The subject property's assessed 2006 value, \$131,280, is shown on Exhibit 2 while the assessed 2006 value of the 820 West Hickory property, \$119,300, is shown on Exhibit 3. In order to prove non-uniform valuation, assessed values need to be compared for properties of the same type and characteristics. However, the two properties here are not comparable in many respects.

A comparison of the property record files Exhibit 2:2 and Exhibit 3:2 shows many non-comparable factors. The condition of the subject property is "very-good" while the condition of the neighbor's Hyde property is "Good +". The subject property is one story while the neighbor's property is 1 1/2 stories. The square footage for the subject property is 1496 square feet while the square footage for the neighbor's property is 1864 square feet. The basement areas, both finished and unfinished, differ significantly between the properties.

In addition, the miscellaneous improvements of each property vary considerably. The subject property has \$29,215 in miscellaneous improvements, while the neighbor's property has miscellaneous improvements of \$15,255, Exhibit 2:2 and Exhibit 3:2. The subject property

has" lump sums" of \$730 while the neighbor's property has "lump sums" of \$4,195, Exhibit 2:2 and Exhibit 3:2. The differences stated above, along with differences in miscellaneous improvements and lump sums, cause significant disparity between the two properties. A comparison of the two properties does not provide evidence of incorrectness of the decision of the Saline County Board of Equalization nor does it show that the decision was arbitrary or unreasonable. The appeal of the Taxpayer must be denied.

**VI.
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 incorrect nor that the decision was unreasonable or arbitrary and the decision of the County Board should be affirmed.

**VII.
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 \$ 10,000.00

Improvement value \$121,280.00

Total value \$131,280.00.

3. This decision, if no appeal is timely filed, shall be certified to the Saline County Treasurer, and the Saline 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 7, 2007.

Signed and Sealed. February 7, 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.