

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

|                         |   |                              |
|-------------------------|---|------------------------------|
| RASMUSSEN MECHANICAL    | ) |                              |
| SERVICES,               | ) |                              |
|                         | ) | Case No 06C-046              |
| Appellant,              | ) |                              |
|                         | ) | DECISION AND ORDER AFFIRMING |
| v.                      | ) | THE DECISION OF THE DOUGLAS  |
|                         | ) | COUNTY BOARD OF EQUALIZATION |
| DOUGLAS COUNTY BOARD OF | ) |                              |
| EQUALIZATION,           | ) |                              |
|                         | ) |                              |
| Appellee.               | ) |                              |

The above-captioned case was called for a hearing on the merits of an appeal by Rasmussen Mechanical Services ("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 June 28, 2007, pursuant to an Order for Hearing and Notice of Hearing issued February 20, 2007. Commissioners Wickersham, Warnes, and Sorensen were present. Commissioner Wickersham presided at the hearing.

Kimberly Repichowsky, Chief Financial Officer of the Taxpayer was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Kristen M. Lynch, 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 taxable value of the subject property is unreasonable or arbitrary;

Whether the 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 Sub Lots 23, 33, 36 and N 153 St of Sub Lot 31 in Tax Lot 5 and ½ of vacated 10th St in the E½SE¼NE¼ section 15, Township 15, Range 13, in 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:

Case No. 06C-046

Description: Sub Lots 23, 33, 36 and N 153 St of Sub Lot 31 in Tax Lot 5 and ½ of vacated 10th St in the E½SE¼NE¼ section 15, Township 15 Range 13, Douglas County, Nebraska.

|             | Assessor Notice Value | Taxpayer Protest Value | Board Determined Value |
|-------------|-----------------------|------------------------|------------------------|
| Land        | \$207,800.00          | \$105,000.00           | \$166,200.00           |
| Improvement | \$ 84,800.00          | \$In land value        | \$84,900.00            |
| Total       | \$292,600.00          | \$105,000.00           | \$251,100.00           |

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 February 20, 2007, set a hearing of the appeal for June 28, 2007, at 1:00 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        | \$166,200.00         |
| Improvement value | <u>\$ 84,900.00</u>  |
| Total value       | <u>\$251,100.00.</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. A corporate officer or other representative of an entity, must be shown to be familiar with the property in question and have a knowledge of values generally in the vicinity to be qualified to offer an opinion of value. *Kohl's Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb.App. 809, 638 N.W.2d, 881 (2002).
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 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).



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**

The subject property is an industrial parcel in the northeast sector of Omaha, Douglas County, Nebraska. Improvements include an office building and buildings used for storage, shop or warehouse purposes.

Both actual value and the equalized taxable value of the subject property were raised as issues before the County Board. (E1:40). No evidence was produced at the hearing on the merits concerning the equalized taxable value of the subject property. Conflicting evidence was received concerning actual value of the subject property as of the assessment date and it is that evidence which will be discussed.

An appraiser employed by the County Assessor's office ("County Appraiser") was called by the County Board as a witness. The County Appraiser testified that in his opinion actual value of the subject property as of the assessment date, based on his inspection of the subject property in May 2006 and a review of available information, was \$292,600.00. The testimony of the County Appraiser on behalf of the County Board is a sufficient basis for a conclusion that the decision of the County Board was unreasonable or arbitrary. The Commission is required to consider the reasonableness of actual value as determined by the

County Board based on the evidence presented. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W.2d 518, (2001).

Documents received by the Commission and testimony also show that following the County Appraiser's inspection someone in the County Assessor's office recommended a reduction in actual value of the subject property. (1:25). Two adjustments were proposed, a reduction in the value of land to \$4 per square foot and a reduction in the value of the improvements (building 3) by \$20,000. (E1:25). The County Appraiser stated that his belief was that the adjustment was proposed by his former supervisor. The supervisor's recommendation was adopted by the referee and the referee's recommendation was approved by a coordinator at least in spirit. (E1:3). The Parcel contains 41,554 square feet. (E1:17). Value attributable to the land prior to County Board action was \$207,800 and after County Board action \$166,200 a reduction of \$41,600.00 ( $\$207,800 - \$166,200 = \$41,600$ ). The initial County Assessor value for the parcel was \$292,600. (E1:1). A reduction of \$292,600 by \$41,600 is near the County Board's determination ( $\$292,600 - \$41,600 = \$251,000$ ). The difference between the mathematical result and the County Board's determination is a \$100 increase in the value assigned to improvements from \$84,800 to \$84,900. (E1:1). The value adopted by the County Board matches the mathematical recommendation of the referee even if the mathematics do not match the articulated recommendations. (E1:4). The County Board is not bound by recommendations of the referee, the coordinator, or the assessor's office, and it is not unreasonable or arbitrary for the County Board to ignore advice. However, the confusion that can be created by mathematical calculations which are different than articulated recommendations and the resulting difficulties on review are apparent.

A County Appraiser testified on behalf of the County Board that in his opinion actual value of the subject property as of the assessment date was the value initially determined by the Assessor \$292,600.00. The County Boards determination was \$251,100. (E1:1).

On formation of the Commission the standard of review applicable to decisions of a County Board of Equalization was expressed in Section 77-1511 of Nebraska Statutes. The section read in pertinent part as follows: “The Tax Equalization and Review Commission shall hear appeals *and cross appeals* taken under section 77-1510 as in equity and without a jury and determine anew all questions raised before the county board of equalization which relate to the liability of the property to assessment or the amount thereof. The commission shall affirm the action taken by the board unless evidence is adduced establishing that the action of the board was unreasonable or arbitrary *or unless evidence is adduced establishing that the property of the appellant is assessed too low.*” (emphasis added) Neb. Rev. Stat. §77-1510 (repealed 2001 Neb. Laws LB 465 §12). In 1999, the following provision was enacted and codified as section 77-5016(7) of Nebraska Statutes: “The Commission shall hear all appeals and cross appeals taken under section 77-5007 as in equity and without a jury and determine de novo all questions raised before the county board of equalization or the Property Tax Administrator which relate to the liability of the property to assessment or the amount thereof. The commission shall affirm the action of the board or Property Tax Administrator unless evidence is adduced establishing that the action of the board or the Property Tax Administrator was unreasonable or arbitrary”. 1999 Neb. Laws LB 140 §4. After enactment of LB 140 in 1999, two sections with differing provisions governed Commission review of appeals from a county board of equalization. In 2001, section 77-1511 of the Nebraska Statutes was repealed. 2001

Neb. Laws LB 465 §12. Finally, in 2002, a provision providing for the taxing of costs in the event of a cross appeal by a county board of equalization was repealed. 2002 Neb. Laws LB 994 §33, repealing Section 77-1513 of Nebraska Statutes. After that repeal, all references to cross appeals by a county board of equalization and to review by the Commission if it determined that an assessment was “too low” had been removed. The Commission is unaware of any section of Nebraska Statutes giving a County Board of Equalization authority to file a cross appeal from its own decision and none was filed in this case. The Taxpayer, like the County Board, is entitled to know the issues on appeal. *Gordman Properties Co. v. Board of Equalization*, 225 Neb. 169, 403 N.W.2d 366 (1987). Without a cross appeal and without the repealed section of statute giving notice that an increase in actual value could be determined on appeal, the Commission cannot find that actual value of the subject property exceeded actual value as determined by the County Board.

The Taxpayer also presented testimony of an appraiser (“Taxpayer’s Appraiser”). The Taxpayer’s appraiser testified that in his opinion actual value of the subject property was \$170,000 as of January 1, 2006. That opinion was based on an appraisal with an effective date of January 1, 2007. The appraisal was not received in evidence. The Taxpayer’s Appraiser testified that his opinion of actual value as of January 1, 2007 was identical to his opinion of actual value as of January 1, 2006. The Taxpayer’s Appraiser testified that his opinion of value as supported by the appraisal was based in part on a 3% time adjustments to 5 sales. The Taxpayer’s Appraiser testified that the 3% adjustment was nominal and that a 5% error in the estimation of actual value of property on any given date was acceptable in his opinion. The adjustment to any sale would be more than 5% if a 3% per year adjustment is made. Further

with a few sales being considered the result of an adjustment would be magnified, particularly if an adjusted sale was given more weight in the valuation process.

The Commission's order for hearing requires any party wishing to assert that one parcel is comparable to another to furnish the County Assessor's property record file for the parcels. Improvements to real property are comparable if they share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation*, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, p. 98. Land is comparable when it shares a similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location. *Property Assessment Valuation*, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, p. 70 - 76. The County Assessor's property record files contain all or at least most of the information necessary to make a determination of comparability. In this case the only evidence of comparability is the testimony of the Taxpayer's Appraiser concerning addresses and uses of parcels he considered comparable. That is not enough. The Commission notes again that the opinion of the Taxpayer's Appraiser was based on an appraisal report that was not received into evidence. Whether the appraisal report would have buttressed the Taxpayer's Appraiser's testimony is unknown.

In this appeal the Commission heard an opinion of actual value presented on behalf of the County Board. It cannot lawfully adopt that opinion. The Commission also heard an opinion of actual value offered on behalf of the Taxpayer. For reasons stated above the Commission does not consider the opinion offered on behalf of the Taxpayer an adequate basis for a determination of actual value. The Taxpayer's burden is to establish actual value if the

reasonableness of the County Board's determination is at issue. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W.2d 518, (2001). *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981).  
Relief cannot be granted.

**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 however 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        | \$166,200.00                |
| Improvement value | <u>\$ 84,900.00</u>         |
| Total value       | <u><u>\$251,100.00.</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 11, 2007.

**Signed and Sealed.** July 11, 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.**