

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

ROBERT J. HUCK,	)	
	)	
Appellant,	)	Case No 06R-396
	)	
v.	)	DECISION AND ORDER REVERSING
	)	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 Robert J. Huck ("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 May 31, 2007, pursuant to an Order for Hearing and Notice of Hearing issued December 13, 2006, as amended. Commissioners Wickersham, Warnes, Lore, and Sorensen were present. Commissioner Wickersham presided at the hearing.

Robert J. Huck, was present at the hearing. John M. Prosocki 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:

Whether the decision of the County Board determining actual value of the subject property was 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 was 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 Lots 118 and 119 Fontenelle Addition, Bellevue, Sarpy 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 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:

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Description: Lots 118 and 119 Fontenelle Addition, Bellevue,, Sarpy County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00
Improvement	\$578,698.00	\$264,667.50	\$566,019.00
Total	\$628,698.00	\$314,667.50	\$616,019.00

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 December 13, 2006, set a hearing of the appeal for May 31, 2007, at 9:00 a.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	\$ 50,000.00
Improvement value	<u>\$555,172.00</u>
Total value	<u>\$605,172.00.</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. 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).
15. 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).

16. 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)
17. 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).
18. "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).
19. 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).
20. 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).
21. "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).

22. 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).
23. 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).
24. 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 a residential parcel with a 1½ story single family residence built in 1971. (E16:1). The residence contains 3,330 square feet of above grade living area, a 3261 square foot basement and an attached garage with 819 square feet. (E16:2).

#### **A. Actual Value**

The Taxpayer's protest to the County Board stated that actual value of the subject property had not been properly determined for the tax year 2006. (E1:2). An appraiser for



Sarpy County testified that after an inspection of the subject property his opinion of actual value of the subject property as of January 1, 2006, was \$605,172.00. The opinion of the appraiser is supported by a cost approach analysis shown in Exhibit 16, and was not controverted by the Taxpayer. The opinion of the appraiser is clear and convincing evidence that the decision of the County Board was unreasonable and arbitrary. Actual value of the subject property as of January 1, 2006, was \$605,172.00.

### **B. Equalization**

The Taxpayer asserted in his protest to the County Board that “The assessed value exceeds the valuation of other similar property. There is a lack of proportionate and uniform valuation regarding this property which results in lack of uniformity and equity required by the Nebraska Constitution.” (E1:2). The Taxpayer reached that conclusion based on an analysis of the square foot value of improvements on various parcels. (E2:1). The Taxpayer asserts that the principles announced in *Scribante v. Douglas County Board of Equalization*, 8 Neb. App. 25, N.W.2d 190 (1999), are applicable in this case. In *Scibante* the Taxpayer was able to show that the per square foot value of finished living area for comparable properties was significantly lower than the per square foot value of finished living area for the Scribante residence. The Taxpayer in this appeal, obtained information concerning the value of improvements and square footage from a web page maintained by the County Assessor’s office. (E10:11 through 49). An analysis of the property record files for the parcels analyzed by the Taxpayer shows that the value for improvements includes values assigned to basements and various other improvements such as garages, swimming pools, and decks. (E11 and E31 through 41). In short, the value

analyzed by the Taxpayer included values for items which are not a part of an above grade or finished living area. However, whether the correct standard is an analysis of the value of all improvements on a parcel divided by the square footage of a residence above ground or a more exacting analysis of the value assigned to only the above grade or finished living area is not material in this case. In addition, an analysis of only improvement value may not be sufficient to prove lack of equalization. *See. Bumgarner v. Valley County*, 208 Neb. 361, 366 - 367, 303 N.W.2d 307,311 (1981).

The Taxpayer in this case presented evidence of the taxable value of only one parcel that he considered to be comparable to the subject property. A listing of various attributes of the subject property and those for the comparable presented by the taxpayer as derived from the County Assessor's records is as follows:

Attribute	Exhibit 6 Comparable	Exhibit 16 Subject Property
Type	Single Family	Single Family
Quality	40 - Good	55 Very Good +
Condition	30 - Average	40 - Good
Basic Area	4,918	3,330
Basement Area	1,216	3,261
partition finish	537	3,101
recreational finish		
minimum finish	537	
Basement walkout entrance		X
Bedrooms	3	5
Baths	2.5	4
Heat Type	100% warm & cooled	100% warm and cooled
Roof Type	Wood Shakes	Concrete Tile
Plumbing Fixtures	16	23
Year Built	1974	1971
Built in Garage	497	
Attached Garage		819
Concrete Swimming Pool	240	
Indoor Pool		512

All indications of size are by square feet. The Taxpayer presented evidence in the form of MLS listings showing that the swimming pool of the comparable is an indoor pool and that it has fewer square feet than shown in the County Assessor's records. (E4 and E5). The Taxpayer also presented evidence that the quality and condition of the comparable were better than shown in the County Assessor's records. An appraiser testifying on behalf of the Taxpayer opined that the parcel described in Exhibit 6 is "very very similar" to the subject property and that by "similar" he meant "comparable". On examination the appraiser testified that the primary basis for his opinion was the presence of an indoor pool in both residences.

"Comparable properties" 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. The Commission may utilize its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it. Neb. Rev. Stat. §77-5016 (Cum. Supp. 2006). The Commission is asked by the Taxpayer's appraiser to consider one element of comparability, the presence of an indoor pool. Other factors such as differences in size, basements, garages, fixtures, roof, baths and number of bedrooms are also material. The Commission does not adopt the opinion of the Taxpayer's appraiser. The parcel described in Exhibit 6 is not comparable to the subject property.

There is a further issue with the evidence. The Taxpayer asks the Commission to rely on the County Assessor's record to establish the per square foot value of the above grade living area of the parcel described in Exhibit 6. It is clear that the County Assessor's original records for the subject property are unreliable. There is also evidence that the County Assessor's records for the property described in Exhibit 6 are unreliable. One aspect of the County

Assessor's records that may not be reliable is the size of the comparable described in Exhibit 6. The County Assessor's records show 4,198 square feet of above grade living area. (6:2). Two MLS listings show 3,559 square feet of above grade living area (1,715 + 1,616 + 228). (E3:1 and E4:1). The MLS listings also show a basement of 2,138 square feet. (E3:1 and E4:1). No one testified that they had verified either the County Assessor's records or the MLS records and the Commission cannot speculate. Even if the Commission deemed the parcel described in Exhibit 6 as comparable and adopted the methodology described in *Scribante, supra.*, there is no reliable basis on which to make the necessary determinations.

**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 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 vacated and reversed.

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

Land value           \$ 50,000.00  
Improvement value \$555,172.00  
Total value           \$605,172.00.

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 on June 7, 2007.

**Signed and Sealed.** June 7 , 2007.

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Wm. R. Wickersham, Commissioner

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Susan S. Lore, Commissioner

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Ruth A. Sorensen, Commissioner

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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.**