

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

| | | |
|-------------------------|---|------------------------------|
| ROGER F. MORRISSEY, |) | |
| |) | |
| Appellant, |) | Case No 04R-090 |
| |) | |
| v. |) | DECISION AND ORDER AFFIRMING |
| |) | THE DECISION OF THE DOUGLAS |
| DOUGLAS COUNTY BOARD OF |) | COUNTY BOARD OF EQUALIZATION |
| EQUALIZATION |) | |
| |) | |
| and |) | |
| |) | |
| HOMEMAKERS, INC., |) | |
| |) | |
| Appellees. |) | |
| |) | |

The above-captioned case was called for a hearing on the merits of an appeal by Roger F. Morrissey, Douglas County Assessor, ("the Assessor") 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, beginning on May 16, 2006, pursuant to an Order for Hearing and Notice of Hearing issued January 19, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Roger F. Morrissey, was present at the hearing. Vincent Valentino appeared as legal counsel for Roger F. Morrissey.

Patrick Bloomingdale, appeared as legal counsel for the Douglas County Board of Equalization ("the County Board").

Thomas L. Hilt, President of Homemakers, Inc. was present. Richard L. Anderson and John M. Prosocki appeared as legal counsel for Homemakers, Inc. ("the Taxpayer").

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 Assessor has asserted that actual value of the subject property as of January 1, 2004, is more 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, 2004?

II.
FINDINGS OF FACT

The Commission finds and determines that:

1. The Assessor has a statutory right to bring above captioned appeal.
2. The parcel of real property described below is the ("subject property").

- 3. Actual value of the subject property placed on the assessment roll as of January 1, 2004, ("the assessment date") by the 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. 04R-090

Description: Lots 1 & 2 Regency 1st Addition, Replat 2, Omaha, Douglas County, Nebraska.

| | Assessor Notice Value | Taxpayer Protest Value | Board Determined Value |
|-------------|-----------------------|------------------------|------------------------|
| Land | \$ 297,000.00 | \$ 147,465.00 | \$ 297,000.00 |
| Improvement | \$2,265,700.00 | \$1,168,470.00 | \$1,318,000.00 |
| Total | \$2,562,700.00 | \$1,315,935.00 | \$1,615,000.00 |

- 4. An appeal of the County Board's decision was filed with the Commission by the Douglas County Assessor.
- 5. The County Board and Homemakers Inc., were each served with a Notice in Lieu of Summons and duly answered those Notices.
- 6. An Order for Hearing and Notice of Hearing issued on January 19, 2006, set a hearing of the appeal for May 16, 2006. The hearing with recesses extended over several days
- 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 2004 is:

Land value \$ 297,000.00

Improvement value \$1,318,000.00

Total value \$1,615,000.00.

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. Without evidence of actual or fair market value other than as determined by the County Board it is not possible to determine that the County Board's value is unreasonable. The County Board's determination should be affirmed. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W.2d 518 (2001).

IV. ANALYSIS

The subject property is an improved residential parcel. The parcel contains two lots. Improvements on the subject property are extensive and include a residence located on Lot 1

with more than 13,000 square feet above ground with a basement, indoor pool and attached garages. (E4:2 & 3). The indoor pool has functional deficiencies. The subject property also has an outdoor pool. (E4:2 & 3). There is an unusable tennis court on the subject property. The subject property is encompassed by a wrought iron fence supported by marble pillars and a security gate. The residence is sheathed in ashlar stone, a type of marble. Construction of the residence was completed in 1972. The kitchen in the residence has been remodeled. One of the garages was rebuilt after a fire.

The County Board determined actual value for the subject property based on the recommendation of one of its members. (E11 and 14). The single county board member's recommendation was based on representations and material presented by representatives of Homemakers Inc. ("the Taxpayer").

At the meeting with a single county board member the Taxpayer's President discussed various factors which he believed affected actual value of the subject property. (E14). The condition of the subject property was discussed including the presence of mold in the residence. The presence of high tension power lines on one side of the subject property was discussed and the presence of a major street along one side of the subject property was also discussed. The Taxpayer contended that those factors detracted from actual value of the subject property and that actual value did not exceed an amount for which a portion of the property had been listed for sale. The Taxpayer did not present any evidence of the cost of remediating mold in the residence. The Taxpayer presented evidence of sound levels resulting from traffic on the adjoining street but offered no evidence of the negative impact on actual value. (E25). The Taxpayer also presented evidence that the presence of high tension power lines could affect

value but did not present evidence of any effect on the subject property. (E13:14) The Taxpayer did present general information of the impact of mold, traffic and power lines on value, none of the information could specially be applied to Nebraska, Douglas County, or the subject property. (E13:66 and 67). The Taxpayer's President also stated that cost estimates had not been obtained for remediation of various problems brought to the attention of the board because "it's not a big issue with me". (E14:13).

The Taxpayer also advised the county board member that Lot 1 of subject property was listed for \$1,395,000.00 with some contingencies. The contingencies were characterized as being quantitative in nature with a value of between \$200,000.00 and \$300,000.00. (E14:10). The Taxpayer's President represented that the listed property could be purchased for \$1,695,000.00. (E14:10). That number may have included Lot 2 but that is unclear. Whether or not the county board member ever reviewed a copy of the listing is uncertain. The Taxpayer's President admitted that the value of \$1,315,000.00 stated in the protest was low. (E14:10). The county board member suggested that \$1,700,000.00 be used as a starting point for determination of actual value for the subject property. (E14:3). A fair implication from the transcript is that the starting point value was based on the representation of the Taxpayer's President that the listed property could be bought for \$1,695,000.00. The county board member next suggested that the starting point be lowered to a point between 92 and 100% of value because of a belief that the law required that result. (E14:13). A listing agreement was produced for the Commission as Exhibit 38 pages 2 through 15. The listing covers the period from October 22, 2003, to April 19, 2004. (E38:4). The listing agreement provided for the sale and purchase of only Lot 1 of the subject property for \$1,395,000.00. (E38:1 and 4) The

stated purchase price would be increased by the buyer's payment of a broker's commission in the amount of \$97,650.00. (E38:4). As an added cost the buyer would be required to construct a fence between Lots 1 and 2 and relocate the drive if lot 2 wasn't purchased by the buyer of Lot 1. (E38:15). A performance bond of \$85,000.00 would be required for construction of the fence and relocating the drive. (E38:15). The Taxpayer's President testified that Lot 2 could be purchased with Lot 1. The listing agreement does not, however, contain an offer to sell Lot 2. Fixtures and equipment with a value of \$250,000.00 were excluded from the sale but could be purchased separately. (E38:9). Personal property with a value of \$1,500,000.00 was also excluded from sale but could be purchased. (E38:10 through 14). The listing agreement does not cover all of the subject property and has a minimum asking price for Lot 1 of \$1,577,650.00 ($\$1,395,000.00 + \$97,650.00 + \$85,000.00 = \$1,577,650$). Nothing in the literature reviewed by the Commission suggests that a listing agreement is definitive evidence of value.

After arriving at a starting point value that was supported only by the unsubstantiated representations of the Taxpayer's President, the county board member suggested a reduction in value by a factor of 95%. The factor was represented as the midpoint between the numbers 92 and 100. A simple array of the numbers discloses that the midpoint is 96 and is an obvious mathematical error if 95 was considered to be the midpoint. The county board member's remark also exhibited a misunderstanding of the law. Real property, with the exception of agricultural land and horticultural land, is required to be assessed at 100% of its actual value. Neb. Rev. Stat. §77-201(1) (Reissue 2003). The Taxpayer also presented information to the county board member as evidence that the taxable value of the subject property was not equalized based on assessed value per square foot. If the 95% factor was an attempt to meet the

equalization claim of the Taxpayer, it also misses the mark. The level of value for all residential property in Douglas County for the year 2004 was 94%. *2004 Reports and Opinions of the Property Tax Administrator for Douglas County, pg 20*. A reduction by that factor to meet an equalization claim is not correct. Equalization of taxable value for individual properties requires a comparison of the ratio of taxable value to actual value of comparable properties. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999). The statistic produced by the Property Tax Administrator was based on 19,568 sales. *2004 Reports and Opinions of the Property Tax Administrator for Douglas County, pg 20*. It is not possible that all of those sales were of parcels that are comparable to the subject property. That statistic is useful for an estimate of the general level of assessment for residential real property as required by statute. Neb. Rev. Stat. §77-5023 (Reissue 2003). The statistic was derived from sales with a minimum sale to assessment ratio of 15.09 to a maximum ratio of 800. *2004 Reports and Opinions of the Property Tax Administrator for Douglas County, pg 20*. It has no application to the valuation of an individual parcel. No evidence of the ratio of actual value to taxable value was produced for any parcel comparable to the subject property.

The recommendation of the county board member to the board was based on information that either would not support the conclusions reached or was contrary to law. The decision of the County Board was unreasonable or arbitrary. The remaining burden of the Appellant is to provide evidence of actual value as of the January 1, 2004. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W.2d 518, (2001).

At the hearing before the Commission the Assessor produced evidence of actual value through the cost approach based on use of cost factors published by Marshall and Swift in its publication titled *Exceptional Homes: A Cost Guide to High Value and Unique Residences*, 2002 , the cost approach based on residential Marshall and Swift cost data generally described as the market adjusted cost approach, and a regression analysis of sales. Each will be discussed in turn.

COST APPROACH EXCEPTIONAL HOMES GUIDE

The County Assessor testified that in his opinion actual value of the subject property as of January 1, 2004, was \$2,922,000.00. The Assessor's determination was based upon application of the cost approach. (E4:12 through 16). The cost approach is one statutorily recognized approach for the determination of actual value. Neb. Rev. Stat. §77-112 (Reissue 2003). Using professionally accepted mass appraisal methodologies, 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.

Value of the land was estimated at \$297,000.00. (E4:13). The Commission notes that Appellant’s post hearing brief contends that actual value of the land far exceeds the Assessor’s estimate.

The Assessor relied on cost factors published by Marshall and Swift in *Exceptional Homes: A Cost Guide to High Value and Unique Residences*, 2002, (“*Guide*”) to determine the cost new of the improvements. Application of the *Guide* requires classification of the structure to be valued on a scale of I (lowest) to VI (highest). The characteristics of each class are described in the *Guide*. The costs new associated with various components of a structure increase as the classification increases from I to VI. The Assessor classified the residence on the subject property as a Class V structure. The Taxpayer’s President testified that the residence should be classified as a Class III structure and pointed out various characteristics of the residence that did not match the description of a Class V structure. The characteristics of a Class III structure are found on pages A-33 through A-36 of the *Guide*. Characteristics of a Class V structure are found on pages A-65 through A-69 of the *Guide*. A comparison of the descriptions shows that at the very best differences are nuanced. In addition the *Guide* available to the Commission pertains to the year 2002. Construction of the residence on the subject property was completed in 1972. To the extent the *Guide* reflects current construction techniques, of a recently constructed home that home may be functionally comparable to older construction but be described in a different fashion. An example is testimony concerning floor supports in the residence on the subject property. The Taxpayer’s President testified that the

residence does not contain a steel frame to allow for long spans in the great room. That is one of the characteristics of a Class V residence as described on page A-65 of the *Guide*. Instead of a steel frame the residence on the subject property has a type of concrete floor and support that allows for long spans. Whether a structure should be classified as a Class III or a Class V structure requires reaching conclusions that are based as much on judgement as fact.

Illustrations of residences within various classifications and descriptions of their characteristics are contained in the *Guide* at pages A-101 through A-138. Based on all of the evidence the Commission concludes that the residence on the subject property is not a Class V structure as described in the *Guide*. The Assessor's estimate of value based on the cost approach and utilization of the *Guide* is not clear and convincing evidence of actual value as of January 1, 2004.

MARKET ADJUSTED COST APPROACH

An appraiser employed by the Assessor ("Assessor's Appraiser") testified that the market adjusted cost approach estimate of value, \$2,574,873 was derived from the 2002 NBHD ADJ model. (E2:3). Detail supporting use of the 2002 NBHD ADJ model is shown in Exhibit 4 at page 5. The value of the land, \$297,000, has to be added to the cost new as shown to derive the final estimate of value, \$2,574,873. The Assessor's Appraiser testified at length concerning the 2002 NBHD ADJ model. In summary that estimate of value was derived from the use of the cost approach with cost tables and depreciation schedules furnished by Marshall and Swift as a software package. Replacement cost new as estimated by the software package was then adjusted by a positive factor of 1.95 to bring the cost estimate to "market". The Assessor's Appraiser testified that the adjustment factor had been calculated for a specific class

of properties in Douglas County. That class is the mansion class composed exclusively of 24 residential parcels in Omaha having more than 8,000 square feet of above ground living space. The factor was derived from two sales of parcels in the mansion class. The Assessor's Appraiser testified that the factor was validated in two ways.

One validation of the factor was derived from the sale of a mansion class parcel after development of the factor. The parcel had been valued using the cost approach with the adjustment factor. Information used by the Assessor's Appraiser to analyze the sale can be found in Exhibit 19 at page 39. The parcel which lies immediately across Pacific Street on the south border of the subject property sold on January 13, 2003, for \$2,270,000. (E19:39). Because the factor is applied to improvements only it is necessary to deduct land from the sale price. After deduction of the estimated value for land the remaining value in the sale for improvements is \$1,540,800 ($\$2,270,000 - \$729,200 = \$1,540,800$). The value of improvements calculated in the 2002 assessment process was \$1,401,300 ($\$2,130,500 - \$729,200 = \$1,401,300$). (E19:42) The unadjusted value of improvements as calculated by the computer program was \$718,615. The unadjusted improvement value plus land is \$1,447,815 ($\$718,615 + \$729,200 = \$1,447,815$). That value indicated an assessment to sale ratio of 63.8% ($\$1,447,815 \div \$2,270,000 = 0.638$). With the adjustment factor the assessment to sale ratio based on the 2002 initial valuation was 93.9% ($\$2,130,500 \div \$2,270,000 = 0.939$). Obviously one assessment to sale ratio is better than the other based on an ideal ratio of 100%. Several caveats are necessary. Assessment records show that the calculated value was not the final assessed value and that at time of sale the parcel had an assessed value of \$2,124,500, including land with an estimated value of \$729,200. (E19:42). The Assessor's appraiser

indicated that the value assigned to land in the valuation process was a best guess. It is easy to see however that assigning a higher value to the land component would mean that a lower adjustment factor could be applied to the unadjusted improvement calculation. That observation may be especially important in view of the Assessor's argument that the land alone is worth more than the value of the whole as determined by the County Board. Validation of the adjustment factor as described by the Assessor's Appraiser is not persuasive.

The Assessor's office retained a consulting appraiser to undertake a study which it hoped would validate the results of its valuations of parcels in the mansion class using the market adjusted cost method. The consulting appraiser was asked to rank each mansion class parcel based on various objective and subjective criteria. The consulting appraiser ranking, it was hoped, would be an indication that one parcel would have a greater value than another regardless of the actual value and that the ranking would match or approximate the ranking by value that could be derived from the Assessor's 2004 valuations. The version of the report prepared by the consulting appraiser is Exhibit 7. A tabulation of the results of the study as found in Exhibit 7 are shown in Exhibit 6. A ranking of the parcels based on values as determined by the Assessor for the year 2004 can be derived from either the column headed 2004 or the second column headed \$/SF. (E:6). A quick review shows that the cost per square foot column is influenced by factors other than the size of the structure. The Scott residence for example has a per square foot cost that is 2.294 ($\$34.35 \div \$276.51 = 2.294$) times the cost calculated for the T Wantanabe residence. The Scott residence has an aggregate value 1.656 ($48,262,400 \div \$4,989,600 = 1.656$) times the aggregate value of the T Wantanabe residence. If the parcels are ranked based on aggregate value the subject property is number 10 in that array

and number 7 in the desirability ranking. (E6). The following table is a complete display to the comparative rankings which can be derived from Exhibit 6 based on Assessor value and the consultant ranking.

| Parcel Owner Name | Consulting Appraiser Rank | Rank Variance | Assessor Value Rank | Assessor Value |
|-------------------|---------------------------|---------------|---------------------|----------------|
| T. Wantanabe | 1 | 1 | 2 | \$4,989,600 |
| Scott | 2 | 1 | 1 | \$8,262,400 |
| Ricketts | 3 | 0 | 3 | \$4,442,600 |
| Davis | 4 | 5 | 9 | \$2,572,800 |
| Feather | 5 | 10 | 15 | \$2,073,100 |
| Slosburg | 6 | 1 | 5 | \$2,998,600 |
| Homemakers | 7 | 3 | 10 | \$2,561,700 |
| Mandolfo | 8 | 0 | 8 | \$2,700,000 |
| Schrager | 9 | 8 | 17 | \$1,750,000 |
| Harvey | 10 | 4 | 6 | \$2,940,200 |
| Koch | 11 | 7 | 4 | \$3,968,800 |
| Harper | 12 | 5 | 7 | \$2,934,900 |
| Grewcock | 13 | 2 | 11 | \$2,339,000 |
| Seina | 14 | 0 | 14 | \$2,179,100 |
| Robertson | 15 | 3 | 12 | \$2,227,000 |
| Sederstrom | 16 | 2 | 18 | \$1,720,000 |
| Alvin | 17 | 2 | 19 | \$1,593,100 |
| Newman | 18 | 2 | 16 | \$1,862,200 |
| Huber | 19 | 1 | 20 | \$1,577,200 |
| Gausden | 20 | 4 | 24 | \$1,198,500 |
| G. Wantanabe | 21 | 8 | 13 | \$2,194,000 |
| Quinn | 22 | 1 | 21 | \$1,532,800 |
| Yanney | 23 | 0 | 23 | \$1,134,700 |
| Baer | 24 | 2 | 22 | \$1,326,800 |

Four parcels are ranked identically, five parcels have a rank variance of 1, five have a rank variance of 2 and two have a rank variance of 3. Fourteen parcels out of Twenty four are within 2 rank positions.

A second ranking based on the Assessor's values is possible based on numbers in the column to the right of the 2004 column captioned \$/SF. (E:6). The number in that column is derived from dividing the value shown in the 2004 column by the number shown in the size column. The result is a value per square foot of above ground living space. Since total value is composed of at least two components: 1) land and 2) improvements, value attributed to land could easily affect the \$/SF calculation. In addition the subject property for example has significant improvements other than the residence that contribute to total value. The value attributed to those improvements would also affect the \$/SF calculation. There is no showing that the values attributed to land or improvements other than a residence is uniform among the 24 parcels. Given possible affects of values attributed to land or other improvements the Commission has not analyzed a ranking based on \$/SF.

There is evidence that errors were made in the version of the consulting appraiser's study received into evidence by the Commission. The effect of the errors has not been determined nor has it been determined that any of the errors were material.

The consulting appraiser's study as received by the Commission was not sufficient evidence to establish use of the 1.95 factor as an appropriate adjustment to be used with the cost approach as derived from the County's software package.

REGRESSION ANALYSIS

The Assessor's Appraiser also testified that the computer program utilized by the County produced an estimate of value based on the "market" approach in addition to the estimate based on the market adjusted cost approach or 2202 NBHD ADJ model. The Assessor's Appraiser explained that a large database was created containing information concerning over 30,000 parcels of residential real property sold in Douglas County over a three year period. Through use of an analytical technique called regression analysis the characteristics of each sold parcel are analyzed against its sale price and the characteristics and sale price of all other parcels. The result is assignment of values to each characteristic. When an unsold subject property is selected for valuation, its estimated value becomes the aggregate of the values assigned to each characteristic of the parcel as derived from sold parcels. The process is known as an automated valuation system and is widely used by real estate professionals. Use of the system requires various quality checks be made of both information entered into the data base and procedures for use. The Assessor's Appraiser testified that he monitored the data base and searched for anomalous results in analysis which would indicate either data or procedural errors. The analysis can be affected by the allocation of the price of a sold property to either land or improvements. The estimate of value produced by the assessor's regression analysis of sales was \$2,771,900. (E2:3). The Assessor's Appraiser also testified that a "mansion class" consisting of 24 parcels including the subject property has been created to resolve problems with their assessment using the techniques applied to other residences. The regression analysis presented is not specific to the "mansion class" and is therefore

presumptively subject to problems the Assessor previously sought to avoid by use of the general data base.

Finally the Assessor argues that just the contribution to value of the land component property is greater than the value of land plus improvements as determined by the County Board for the subject property. The Assessor argues that two sales confirm that conclusion. One sale is of a lot on the west border of the subject property. The lot was improved at the time of its sale. Subsequent to its sale the improvements were removed and the lot landscaped to be used with its adjoining lot. The sale of a parcel on which the improvements will be removed is scant evidence of the value of the real property because the cost of removal of improvements and reconditioning of the property are not reflected in the sale price. The true cost is undoubtedly higher than the indicated sale price.

The second sale was outside the subdivision in which the subject property is located. That property was located in an area described by the consulting appraiser as “the center of the real estate universe”, indicating that it was a very desirable parcel. There is no evidence that the subject property shares that happy attribute with the other parcel or the adjustment that might be made to compensate for the subject property’s location vis a vis the highly desirable parcel. The Commission does not have sufficient evidence to determine a contribution to value made by the land component of the subject property for purposes of modifying the Assessor’s estimate of value as derived from use of the cost approach.

Without evidence of actual or fair market value other than as determined by the County Board it is not possible to determine that the County Board’s value is unreasonable. The County Board’s determination should be affirmed. *Garvey Elevators, Inc. v. Adams County Bd. of*

Equalization, 261 Neb. 130, 621 N.W.2d 518 (2001). The Assessor in this appeal has not produced sufficient evidence of actual value of the subject property as of the assessment date and the Commission cannot grant relief despite its misgivings as stated concerning actual value as determined by the County Board.

**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 Assessor has adduced sufficient, clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary.
4. The Assessor has not adduced sufficient evidence of actual value of the subject property as of the assessment date 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, 2004, is affirmed.
2. Actual value of the subject property for the tax year 2004 is:

| | |
|-------------------|-------------------------------|
| Land value | \$ 297,000.00 |
| Improvement value | <u>\$1,318,000.00</u> |
| Total value | <u><u>\$1,615,000.00.</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 2004.
7. This order is effective for purposes of appeal March 30, 2007.

Signed and Sealed. March 30, 2007.

Wm. R. Wickersham, Commissioner

Susan S. Lore, 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.