

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

RON P. HASLEY,)	
)	
Appellant,)	Case No 06R-003
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE GAGE
GAGE 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 Ron P. Hasley ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on February 23, 2006, pursuant to an Order for Hearing and Notice of Hearing issued January 8, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Ron P. Hasley, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Randall Ritnour, County Attorney for Gage County, Nebraska, appeared as legal counsel for the Gage County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006) to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case is as follows.

**I.
ISSUES**

The Taxpayer has asserted that actual value of the subject property as of January 1, 2006, is less than actual value as determined by the County Board. The issues on appeal related to that assertion are:

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

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

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?

**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 described below is 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 Gage 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 3, 4, 5, and 6, Block 7 Cropsey's, Beatrice, Gage County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 17,000.00	\$ 17,000.00	\$ 17,000.00
Improvement	\$193,795.00	\$147,390.00	\$193,795.00
Total	\$210,795.00	\$164,390.00	\$210,795.00

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 Order for Hearing and Notice of Hearing issued on January 8, 2006, set a hearing of the appeal for February 23, 2006, at 9:00 a.m. CST.
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 \$ 17,000.00
Improvement value \$193,795.00
Total value \$210,795.00.

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. “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, 366 - 367, 303 N.W.2d 307,311 (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 (7) (Supp. 2005).
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).

IV. ANALYSIS

The subject property is an improved residential parcel. (E6:34). The 5,264 residence was constructed in 1910. (E6:36). The Taxpayer testified that the kitchen had been updated in

the 70s. The Taxpayer in his protest to the County Board asserted that the condition of the subject property required a reduction in its actual value and that its taxable value was not equalized with other parcels.

Taxable values of parcels are "equalized" when their ratios of actual value to actual value are the same. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999). The Taxpayer did not present evidence of the assessed value or actual value of another property. The Commission cannot grant relief based on the Taxpayer's assertion that taxable value of the subject property is not equalized with others.

The Taxpayer's other assertion is that actual value of the subject property should be reduced due to its condition. Condition refers to the physical state after construction of an improvement and requires an evaluation of items in need of immediate repair, those items that may be repaired or replaced at a later time and those items that will last the full economic life of the improvement. *The Appraisal of Real Estate*, 12th Edition, Appraisal Institute, 2001, pg. 265. The Taxpayer testified that needed repairs included replacement of the tile roof, repainting, and repair of soffits. In addition the Taxpayer testified that the plumbing and wiring in the residence need updating. The Taxpayer testified that the cost of needed repairs and updates exceeded actual value as determined by the County Board. Even if the Commission assumed that it was appropriate to deduct the cost of needed or desired repairs or updates from actual value there is no substantiated evidence of the amount of those items.

At the hearing the County Board stipulated that the physical description of the subject property as shown in Exhibit 6 at page 36 was erroneous. The correction of the error would reduce gross square footage of the residence by 356 square feet and increase the footage of

enclosed porches by a like amount. Exhibit 6 at page 36 shows application of the cost approach for a determination of actual value for the subject property. An Appraiser for the County testified that the error stipulated to by the County Board would lower the calculated value resulting from application of the cost approach in some amount. The appraiser also testified that the cost approach calculation would be affected by adjustments for size and that he did not know what the adjustment factor would be. In addition to the error stipulated to by the County Board, a comparison of the building sketch and the described characteristics of the residence do not match in several respects. First the described characteristics of the residence show a 360 square foot flat roof car port. (E6:38). The sketch shows a 344 square foot car port. (E6:36). The residence is described as having a 728 square foot slab with a roof. (E6:38). The building sketch shows a 713 square foot slab. (E6:36). The Commission is unable to determine whether the sketch or the described characteristics are correct.

While there are errors in the County Board's use of the cost approach to determine actual value of the subject property the Commission does not have sufficient evidence to make corrections and arrive at a different determination of actual value based on the cost approach.

An appraiser for the County testified that actual value as determined by the County Board after application of the cost approach was validated by the 1996 purchase of the subject property by the Taxpayer for \$200,000. That testimony is unrefuted.

The Commission is unable to grant relief on the Taxpayers assertion that actual value of the subject property is less than the value 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 Taxpayer has not adduced sufficient, clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

**VI.
ORDER**

IT IS THEREFORE ORDERED THAT:

1. The decision of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2006, is affirmed.
2. Actual value of the subject property for the tax year 2006 is:

Land value	\$ 17,000.00
Improvement value	<u>\$193,795.00</u>
Total value	<u>\$210,795.00.</u>
3. This decision, if no appeal is timely filed, shall be certified to the Gage County Treasurer, and the Gage 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 March 7, 2007.

Signed and Sealed. March 7, 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.