

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

BRAD D. AND REBECCA S. MOUNT,)	
)	
Appellant,)	Case No 06R-116
)	
v.)	DECISION AND ORDER AFFIRMING
)	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 Brad D. and Rebecca S. Mount ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on January 31, 2007, pursuant to an Order for Hearing and Notice of Hearing issued November 30, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Warnes presided at the hearing.

Brad D. and Rebecca S. Mount, were present at the hearing. John V. McNamara 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. All of the exhibits, 1 - 32, were received without objection. Exhibit 33 was offered by the Taxpayer at the time of the hearing and received without objection. Exhibit 33 is a transcript of the protest hearing with the County Board.

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?

II. FINDINGS OF FACT

The Commission finds and determines that:

1. The Taxpayer has an interest, sufficient to maintain this appeal, in a parcel of real property described below. That parcel is the ("subject property").
2. Actual value of the subject property placed on the assessment roll as of January 1, 2006, ("the assessment date") by the 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: Lot 9 Edgewater Estates, Sarpy County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 70,000.00	\$ 70,000.00	\$ 70,000.00
Improvement	\$371,284.00	\$316,836.00	\$371,284.00
Total	\$441,284.00	\$386,836.00	\$441,284.00

3. An appeal of the County Board's decision was filed with the Commission.
4. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
5. An Order for Hearing and Notice of Hearing issued on November 30, 2006, set a hearing of the appeal for January 31, 2007, at 3:00 p.m. CST.
6. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.
7. Actual value of the subject property as of the assessment date for the tax year 2006 is:

Land value	\$ 70,000.00
Improvement value	<u>\$371,284.00</u>
Total value	<u>\$441,284.00.</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. 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 the Taxpayer establishes by clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005).
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. "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

This is an appeal regarding the valuation of the residential property of the Taxpayer for the tax year 2006. The Taxpayer does not dispute the taxable value of his land which has been valued at \$70,000 by the Sarpy County Board of Equalization. Thus, the focus of this appeal is the evidence of the contribution to value of the residence.

The residence was built in 2003 and is a ranch-style home with 2,155 square feet of gross living area. There is a basement with 1,484 square feet of partition finish. The characteristics and details of the residence are shown on Exhibit 2:5.

The Taxpayer expressed concerns that the taxable value of the residence was not based on actual value nor upon acceptable appraisal methods. The Taxpayer was most concerned with the change made to the listed quality of the residence from the year 2005 to the year 2006. For 2005 the assessor rated the quality of the residence as "very good", (E2:6); however, for 2006 the quality rating was improved to "very good +", (E2:4). The Taxpayer testified that there had

been no improvements to the residence between the valuation of his property for 2005 and 2006. He also testified that there had been no inspection of the subject property since his purchase.

The taxpayer purchased the subject property on January 16, 2005, for a purchase price of \$438,950. The County Board assessed the subject property for 2006 at \$441,284. The appraiser indicated that on review for assessment in 2006 that the subject property was an “outlier”, in other words, a property whose sale price stood out in comparison to its assessed value.

The appraiser for the County testified that the subject property had been incorrectly rated prior to the assessment for 2006, primarily as to its quality.

The appraiser explained to the County Board at the time of the protest hearing that there were two comparable properties which were used to adjust the quality of the subject property, Exhibit 32:2. These comparable properties were Lots 2 and 16 in the same development as the subject property, Edgewater Estates. A comparison of the subject property to these two properties was made for the primary comparison of quality. These comparable properties are also ranch style and are “very good +” which is a 55 quality. The sale price of Lot 16 was \$495,000, and the sale price of Lot 2 was \$459,000 (Exhibit 32:3). Exhibit 22:1 shows that Lot 16 sold for \$495,654 on October 1, 2004. Lot 16 was assessed for taxable value for 2006 at \$468,339 (Exhibit 22:4). Lot 2 was assessed for taxable value for 2006 at \$444,413 (Exhibit 6:16). The appraiser also testified that she was familiar with the subject property from having been in the property as a potential home buyer shortly after it was constructed, but before the taxpayer purchased it.

The appraiser changed the quality rating for the subject property for 2006 using the other two comparable properties. In the context of a building’s description quality refers to the character of construction and the materials used in the original work. *Appraising Residential*

Properties, 3rd Edition, Appraisal Institute, (1999) pg. 119. This change to the quality rating of the subject property was done without an inspection of the subject property by the appraiser. The appraiser acknowledged that it is “preferred” to reinspect a property prior to changing characteristics of the property such as “quality”, but in this case a reinspection was not done.

The change made by the County Appraiser in the quality rating of the subject property from “very good” to “very good+” raised the value of the subject property as calculated using the Marshall and Swift cost tables. The change was made to increase value because the ratio of assessment value to sales price was as noted above and characterized as an outlier. The change was made without an inspection. The actions of the County Appraiser ignored the other possible conclusion that the Taxpayer had overpaid. A physical inspection of the subject property should have been conducted before a change in quality was made to alleviate a statistical problem. A physical inspection by the County Assessor remains important.

The County Board determined actual value of the subject property using the cost approach as shown on Exhibits 8:2 and 3. The cost approach is identified in statute as a permissible approach for a determination of value, Neb. Rev. Stat. §77-112 (Reissue 2003). The cost approach is an approved valuation method used in mass appraisal, *Mass Appraisal of Real Property*, International Association of Assessing Officers, 1999, pages 4, 6-7, and 19. This method of valuation calculates the replacement cost new (RCN) of the improvements based on cost tables and then depreciates the RCN before adding back the value of the land. The Marshall and Swift cost tables were used to calculate the RCN and that calculation is shown on Exhibit 17. The Taxpayer confirmed that the characteristics of the improvements to the subject property were correctly shown on Exhibit 8:3. Actual value of the lot was not disputed. The Taxpayer did not provide any comparable properties with which to compare the subject property.

The Commission cannot grant relief because it has insufficient evidence on which to make a determination of actual value different than that actual 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	\$ 70,000.00
Improvement value	<u>\$371,284.00</u>
Total value	<u>\$441,284.00.</u>

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 March 12, 2007.

Signed and Sealed. March 12, 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.