

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

STEVE M. HYDA,)	
)	
Appellant,)	Case No 06R-403
)	
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 Steve M. Hyda ("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 28, 2007, pursuant to an Order for Hearing and Notice of Hearing issued December 20, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Warnes presided at the hearing.

Steve M. Hyda, was present at the hearing. No one 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 case file was received without objection. Exhibits 1 to 27 were received without objection. Taxpayer offered Exhibit 28 consisting of four pages. Pages one and two of exhibit 28 were received without objection, but pages three and four of exhibit 28 were denied upon objection by the County that they were not timely provided.

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 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:

Case No. 06R-403

Description: Lot 43 Millard Park South, Sarpy County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00
Improvement	\$178,662.00	\$166,716.00	\$178,662.00
Total	\$213,662.00	\$201,716.00	\$213,662.00

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 December 20, 2006, set a hearing of the appeal for February 28, 2007, 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	\$ 35,000.00
Improvement value	<u>\$178,662.00</u>
Total value	<u>\$213,662.00.</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, 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 Taxpayer appeals both the valuation of the subject property and its equalization with other similar properties. The Taxpayer does not dispute the valuation of the land, but only the improvements thereto.

The improvements consist of a 3 bedroom, 2 bath ranch style home with 1684 square feet (SF) (Exhibit 5:3 and 5:4). There is a two car attached garage and a 1650 SF finished walkout basement. The other improvements to the house are itemized on Exhibit 5:4 and were confirmed by the Taxpayer to be accurate and correct.

The house was purchased new by the Taxpayer on October 6, 2003, as shown on the Form 521 filed with the Sarpy County Register of Deeds on May 28, 2004, and (Exhibit 24:1). The date of the deed to the Taxpayer was not dated until May 20, 2004, which matches when the Taxpayer stated he moved into the house. The purchase price paid by the Taxpayer for the subject property was \$200,736.

The Taxpayer testified that his primary concerns with the County Board’s valuation were as follows. First, the Taxpayer felt that his house was valued the same as a three car garage home despite the fact his home only had a two car garage.

A second objection was that the cost approach used by the County Assessor did not take into account the construction options the Taxpayer used in building his house. He believes that

his improvements were valued the same as other comparable sized homes with better construction options.

A third concern of the Taxpayer was that his house was valued above the sale price of this home when other homes on his street were not.

The Taxpayer's equalization issue rested on his belief that his house was not valued equal to the value of other homes on his street with all of them being valued below their sale price.

The Taxpayer provided only two comparable properties to support his contentions. These are shown on Exhibit 28:1 and 28:2. The only testimony provided was his own. However, the Commission has examined the evidence provided by the County Board and reviewed the testimony of the Taxpayer.

Exhibit 26:1 is an Uniform Residential Appraisal Report (URAR) on the subject property with an effective date of valuation of May 19, 2004. The appraisal valuation was \$201,000 using the Sales Comparison Approach and the condition of the house was rated "excellent". The appraisal also calculated a second value using the Cost Approach to value and this value was \$211,268. This valuation was based on land value referred to on the URAR as site value of \$30,000, but in this appeal the Taxpayer did not dispute the land valuation for 2006 of \$35,000. The total valuation using the 2004 URAR's cost approach to valuation and substituting \$35,000 for the land value would result in a valuation of \$216,268. This appeal is from the Sarpy County's Board of Equalization decision valuing the subject property at \$213,662 for 2006.

The Commission also notes that the appraiser in the URAR adjusted for an extra garage stall, 3 as opposed to 2, in the Sales Comparison Approach in an amount of \$4,500. The Taxpayer testified that he had heard a realtor state that a 3rd garage stall on a house adds \$10,000 of value to the improvements.

Exhibit 4:4 to Exhibit 4:20 shows that 29 properties in the same development as the subject property, Millard Park South, were assessed for 2006 at a value greater than their sale price. Such evidence is of little consolation to the Taxpayer, since one conclusion that could be reached, is that the County also reached incorrect valuations for all of these other properties. However, a review of Exhibit 4:4 to Exhibit 4:20 shows that there are several other properties on the same street as the Taxpayer which were valued for more than the sale price. These properties can be mapped on Exhibit 25:1. The lots which were valued in 2006 for more than their sale price and are on the same street as the Taxpayer's property are Lots 20, 23 and 46. The other 26 properties, while not located on the same street as the Taxpayer's property, are all within the development.

The Commission notes that the Taxpayer's property has one of the highest assessment to sale price ratios, 106.44% (Exhibit 4:5), but not the highest. Lot 334 in Millard Park South had a ratio of 111.04 % (Exhibit 4:19).

The County provided a sales roster of all properties in the Millard Park South subdivision which had sold between June 30, 2003 to July 1, 2005 (Exhibit 4:21 to 4:24).

The Taxpayer stated that Exhibits 15 and 16 were most comparable to his property and they should be reviewed to support his belief as to valuation and equalization. The property on

Exhibit 15 was sold on June 16, 2002. The Commission reviewed Exhibit 15 despite its older date of sale.

Exhibit 15 is the property record file for Lot 22, Millard Park South, a/k/a 16517 Cottonwood St. This property was built in 2002 and sold June 16, 2002, and is therefore two years older than the improvements of the subject property. Thus, the square footage cost figures are less, but the depreciation is 1% greater (12% v. 11%). Also, there are improvements to Lot 22 not found on the subject property. The properties are alike in most respects with the exception that the subject property has a deck roof and the fireplace is double sided. Lot 22 has a three stall garage (Exhibit 15:4). From a comparison of these two very similarly constructed homes, the Commission can see that the extra garage stall increased the value of the improvements to Lot 22 by \$3,699 (\$15,606 for the subject property garage v. \$19,305 for the garage on Lot 22). This additional value was offset by the value of the improvements found on the subject property, but not on Lot 22 and the two properties have been valued within \$258 of each other.

Exhibit 16 is Lot 27, Millard Park South, a/k/a 16445 Cottonwood St. is a more recent sale and therefore a better indicator of actual value: however, the Commission notes that Lot 27 differs from the improvements on the subject property (Exhibit 5:3) in several material ways. Lot 27 is rated Average+ 35 for quality while the Taxpayer's improvements are rated Good 40 for quality. Both are rated Average for condition. The difference in quality is a significant difference when factored into the Cost Approach using Marshall and Swift and the two properties cannot be compared exactly.

The only other evidence presented by the Taxpayer was Exhibit 28, pages 1 and 2. The Commission notes that these pages appear to be part of the property record file for two properties located near the subject property. These pages are not helpful in that they fail to cite the quality or condition of the properties nor do they show the County Assessor's calculation of value. The pages are but a portion of the necessary property record file needed for the Commission to make a comparison of these properties to the subject property.

The Commission is without evidence of the County Board acting incorrectly or in an unreasonable or arbitrary manner. The appeal of the Taxpayer must be denied.

**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	\$ 35,000.00
Improvement value	<u>\$178,662.00</u>
Total value	<u><u>\$213,662.00.</u></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.