

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

JERRY L. HORSTMAN,	)	
	)	
Appellant,	)	Case No 06R-414
	)	
v.	)	DECISION AND ORDER REVERSING
	)	THE DECISION OF THE JOHNSON
JOHNSON 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 Jerry L. Horstman ("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 15, 2007, pursuant to an Order for Hearing and Notice of Hearing issued December 6, 2006. Commissioners Lore, Warnes and Hans were present. Commissioner Warnes presided at the hearing.

Jerry L. Horstman, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Richard R. Smith, a Deputy County Attorney for Johnson County, Nebraska, appeared as legal counsel for the Johnson 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 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 Johnson County Assessor, value as proposed in a timely protest, and actual value as determined by the County Board is shown in the following table:

Description: OT LOTS 1-5 & N2 VAC ALLEY S OF LOTS & ADJ VAC 10TH (1.73 AC), Johnson County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 7,200.00	\$ 7,200.00	\$ 7,200.00
Improvement	\$32,280.00	\$19,353.10	\$20,550.00
Total	\$39,480.00	\$26,553.10	\$27,750.00

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 December 6, 2006, set a hearing of the appeal for February 15, 2007, at 1:00 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	\$ 7,200.00
Improvement value	<u>\$13,682.00</u>
Total value	<u>\$20,882.00</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. Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.” *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534, (1983).
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**

This is an appeal by the taxpayer of his 2006 taxable valuation of the subject property.

The subject property is a mobile home park located in Tecumseh, Nebraska. The property consists of six lots for mobile homes and is 1.73 Acres in size. The Taxpayer operates the business as a sole proprietor using the name "Harbor East Mobile Home Park".

This appeal includes the issues of valuation and equalization. The Taxpayer does not dispute the land valuation of the subject property which has been assessed at \$7,200. The Commission directs its attention to the taxable valuation of the improvements to the subject property.

The Taxpayer presented two theories as to how the subject property should be valued. The first theory was to utilize comparable properties in adjacent counties and average the values used by those counties. The Taxpayer chose to use two properties from Otoe County, Nebraska,

(Exhibits 2:1-2 and 3:1-2) and one property from Pawnee County, Nebraska (Exhibit 4:1-3).

Each of the comparable properties are located approximately 10 miles either north or south from Tecumseh, Nebraska. The Taxpayer suggested that an average be taken for these properties to arrive at the taxable valuation of the subject property since his property was located one half the distance between these comparable properties. This analysis is without merit.

The second theory proposed by the Taxpayer is that the County Board was incorrect in its valuation methods because it both duplicated the costs associated with the construction of his mobile home park and it included costs for items which were not present or not incurred. This resulted in an assessment of the subject property which was too high. From Exhibit 6:2 the Commission can determine that the County Board used the "Cost Approach" to value the subject property which is one of the approved methods of valuation authorized by Neb Revised Statute §77- 112 (Reissue 2003). The "Cost Approach" calculates the replacement cost new (RCN) and reduces it by depreciation before adding back the value of the land. The County Board used the tables of cost from Marshall and Swift as shown on the bottom of Exhibit 6:1. The Commission compared the costs shown to build the spaces for a mobile home park shown on Exhibit 8 of the County Board's exhibits to Exhibit 6:2 and the testimony of the Taxpayer and finds that both duplication of costs and costs for items not present on the subject property have been used. The County Board did not provide testimony to dispute the evidence of the Taxpayer.

Exhibit 8:1 was provided by the County Board and is assumed to have been used by the Assessor to value the lot spaces on the subject property. A review of this exhibit shows a cost per space of \$3,135 using the "cheap" cost table. This figure is further adjusted by multiplying it by a "modifier" of 1.12 for a total cost for each lot space of \$3,511.20. On Exhibit 6:2, the Assessor's worksheet shows the total replacement cost new for the six improved lot spaces of



\$21,070, which is calculated by multiplying the per lot space of \$3,135 times the modifier of 1.12 times the 6 lot spaces on the subject property as of January 1, 2006. However, Exhibit 6:2 adds to this total valuation additional items which in some instances are a duplication of the items costed out to arrive at the unmodified value of \$3,135 per lot space cost shown on Exhibit 8:1.

Exhibit 8:1 includes certain basic costs for computing the RNC of each lot space. The Taxpayer testified that with respect to the cost he incurred to improve the subject property and Exhibit 8:1, he did not incur any costs for engineering, does not have street paving or patio and walks nor any buildings, except for 8' x 10' sheds for each lot space. The Commission finds that Exhibit 8 cannot be used to value the subject property unless significant adjustments are made to the total because it reflects costs not incurred by the Taxpayer and includes valuation for items not present.

The Commission agrees with the Taxpayer that a recalculation is required using the Cost Approach to assess his taxable value of improvements to the subject property

Using Exhibit 8:1, the costs for those improvements to the subject property existing as of January 1, 2006 are:

Engineering -	\$ 220.
Grading -	\$ 180.
Sewer -	\$ 330.
Water -	\$ 265.
Electrical	\$ 360.
Miscellaneous _____	\$ 145.
Total =	<u><u>\$1,500. Cost/Lot Space</u></u>

\_\_\_\_\_The Taxpayer testified that his costs per lot space was \$820. The Commission used Exhibit 8 page 1, for the table of costs for improvements despite the Taxpayer's testimony that his costs were less than shown for items listed. Marshall and Swift is a professionally accepted valuation service and the Commission is familiar with its excellent credibility. No other evidence of costs were provided except the oral testimony of the Taxpayer of his actual costs for which he did not have any receipts or written itemization. Also, the costs shown on Exhibit 8:1 are assumed to be what the County Board used for valuing other similar properties in Johnson County. The cost for improvements not located on the subject property are not included. The Commission notes that the subject property does not have "Buildings" which account for \$965 per lot space.

Using the modifier found on Exhibit 8:1 for 10 or less lot spaces, 1.12, the replacement cost new for each lot space is \$1,680. The total replacement cost new for the six lot spaces is \$10,080.

Additional improvements to the subject property are itemized on Exhibit 6:2 including the concrete pads on which the mobile homes are located (referred to as "concrete drives" on the exhibit) and the yard sheds. These additional improvements for the six lot spaces total \$10,970. The replacement cost new minus depreciation for all of the improvements on the subject property totals \$21,050.

Economic depreciation must be applied to the RCN less physical depreciation value of 35% as shown on Exhibit 6:2 for a reduction of \$7,368 ( $\$21,050 \times 35\%$ ) leaving a value for the improvements of \$13,682. The addition of the undisputed land valuation of \$7,200 to the RCN less physical and economic depreciation, \$13,682 brings the total taxable valuation for the subject property to \$20,882.

The Commission finds that \$20,882 is the taxable valuation for the subject property for 2006.

The Commission finds that the County Board's decision for the taxable valuation of the subject property for 2006 was arbitrary and unreasonable as discussed above. The Taxpayer shall receive affirmative relief as hereby ordered.

**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	\$ 7,200.00
Improvement value	<u>\$13,682.00</u>
Total value	<u>\$20,882.00.</u>

3. This decision, if no appeal is timely filed, shall be certified to the Johnson County Treasurer, and the Johnson 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 February 28, 2007.

**Signed and Sealed.** February 28, 2007.

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William C. Warnes

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Susan S. Lore, Commissioner

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Robert L. Hans, 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.**