

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

NEBCO, INC.,)	
)	
Appellant,)	Case Nos 06SV-001, 06SV-002
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISIONS OF THE DODGE
DODGE COUNTY BOARD OF)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned cases were called for a hearing on the merits of appeals by NEBCO, Inc. ("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 March 16, 2007, pursuant to an Order for Hearing and Notice of Hearing issued January 8, 2007. Commissioners Wickersham, Warnes, and Lore were present. Commissioner Wickersham presided at the hearing.

Robert E. Miller, as Vice President of the Taxpayer was present at the hearing. Shannon L. Doering appeared as legal counsel for the Taxpayer.

Stacey Hultquist, a Deputy County Attorney for Dodge County, Nebraska, appeared as legal counsel for the Dodge 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 the consolidated cases 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 appeals to maintain them.

- 2. The parcels of real property described below are the ("subject property").
- 3. Actual value of each parcel of the subject property as stated in a notice of the County Board as of January 1, 2006, ("the assessment date"), value as proposed in timely protests, and actual value as finally determined by the County Board is shown in the following tables:

Case No. 06SV-001

Description: Tax Lots 57 & 58 Section 20, Township 17, Range 8, 132.66 acres, Dodge County, Nebraska.

	Board Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$1,385,000.00	\$597,900.00	\$950,000.00
Improvement	\$-0-	\$-0-	\$-0-
Total	\$1,385,000.00	\$597,900.00	\$950,000.00

Case No. 06SV-002

Description: Tax Lots 8, 29, 30, 32, 33, 34, & 54 Section 21, Township 17, Range 8, 225.71 acres, Dodge County, Nebraska.

	Board Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$2,365,000.00	\$338,565.00	\$1,390,000.00
Improvement	\$101,595.00	\$-0-	\$-0-
Total	\$2,466,595.00	\$338,565.00	\$1,390,000.00

- 4. Appeals of the County Board's decisions were filed with the Commission.
- 5. The County Board was served with Notices in Lieu of Summons and duly answered those Notices.
- 6. The appeals were consolidated for hearing by order of the Commission.

7. An Order for Hearing and Notice of Hearing issued on January 8, 2007, set a hearing of the appeals for March 16, 2007, at 9:00 a.m. CDST.
8. 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.
9. Actual value of each parcel for the tax year 2006 is:

Case No.06SV-001

Land value	\$950,000.00
Total value	<u>\$950,000.00</u>

Case No.06SV-002

Land value	\$1,390,000.00
Total value	<u>\$1,390,000.00.</u>

**III.
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in each of the above captioned appeals is over issues raised during the county board of equalization proceedings on the appealed decision. *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. 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).
14. 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).

15. 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)
16. 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).
17. "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).
18. 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).
19. 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).

20. A corporate officer or other representative of an entity, must be shown to be familiar with the property in question and have a knowledge of values generally in the vicinity to be qualified to offer an opinion of value. *Kohl's Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb.App. 809, 638 N.W.2d, 881 (2002).

IV. ANALYSIS

The parcels that are the subject property are around lakes formed by the removal of sand and gravel. The lakes adjoin the Platte River. Tenants of the Taxpayer have placed cabins on the subject property. Cabins on the subject property are assessed to leaseholders as improvements on leased land.

The Taxpayer's Vice president testified that actual value of the subject property could be determined based on capitalized rent. The Taxpayer's Vice President testified that rents approximated \$2,000.00 for each cabin site and that an appropriate capitalization rate was 10%. The actual value of each cabin site based on that evidence is \$20,000.00 per site. The Taxpayer and the County Board had reached an agreement that there were 34 developed cabin sites and 1 potential cabin site on the parcel described in Case No 06SV-002. With a total of 35 cabin sites and a value of \$20,000.00 per site the value of that parcel as determined by the Taxpayer's Vice President would have an actual value of \$700,000.00. The Taxpayer and the County Board agreed that the parcel described in Case No 06SV-001 had 17 developed cabin sites and 9 undeveloped cabin sites. The total of 26 cabin sites using the methodology described by the Taxpayer's Vice President would have an actual value of \$520,000.00. The Taxpayer's Vice

President testified that he validated the result by analysis of taxable value for the tax year 2005 and by comparison with comparable parcels in Cass County.

Property record files were not provided for the parcels deemed comparable as required by the Commission's order for hearing. The Taxpayer's Vice-President did testify that leases of the cabin sites on the Cass County sites were for a longer term than those applicable to the subject property. A leased fee interest is the lessor's or landlord's interest. *The Appraisal of Real Estate*, The Appraisal Institute, Twelfth Edition, 2001, p. 81. "The valuation of a leased fee interest is best accomplished using the income capitalization approach. ... The benefits that accrue to an owner of a leased fee estate generally consist of income throughout the lease and the reversion at the end of the lease." *Id.* p. 81 and 82. A leasehold estate is the lessee's or tenant's estate. *Id.* 83. "A leasehold interest may have value if contract rent is less than market rent, creating a rental advantage for the tenant." *Id.* p. 83. An appraiser for the County testified that a long term lease may result in separate valuation of the leasehold and the leased fee interest. The evidence of taxable value for the interest of the Taxpayer in parcels in Cass County is not clear and convincing evidence of actual value for parcels in Dodge County.

The Taxpayer's Vice President sought to validate his calculation of actual value with evidence of the prior year's valuation. A prior year's taxable value is not evidence of actual value in a subsequent year. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201,206 (1988).

The Taxpayer's Vice President testified that he determined actual value for the subject property based on lease income and a capitalization rate. "The valuation of a leased fee interest

is best accomplished using the income capitalization approach. ... The benefits that accrue to an owner of a leased fee estate generally consist of income throughout the lease and the reversion at the end of the lease.” *The Appraisal of Real Estate*, The Appraisal Institute, Twelfth Edition, 2001, p. 81 and 82. The Income Approach can be defined as “a set of procedures through which an appraiser derives a value indication for an income-producing property by converting its anticipated benefits (cash flows and reversion) into property value. This conversion can be accomplished in two ways. One year’s income expectancy can be capitalized at a market-derived rate or at a capitalization rate that reflects a specified income pattern, return on investment, and change in the value of the investment. Alternatively, the annual cash flows for the holding period and the reversion can be discounted at a specified yield rate.” *The Dictionary of Real Estate Appraisal*, Fourth Edition, Appraisal Institute, p.143, (2002).

Three major methods are used to develop an indication of value using the income approach: direct capitalization; yield capitalization; and a discounted cash flow analysis. *Id.* The direct capitalization method produces an indication of value based on a single year’s estimated income. *Supra*, at 529. A yield capitalization method requires an analysis of income and expected returns over multiple years. *Supra*, at 549. Discounted cash flow analysis is a refinement of the yield capitalization method in which a reversionary value is added to the indicated value of the income stream. *Supra*, at 569. A reversionary value is added on the assumption that the asset producing an income stream still exists and has value at the end of the period. *Id.* That value is discounted to present value as of the valuation date and added to the value of the income stream. *Supra*, at ch 24.

Here the Taxpayer's Vice President by his testimony has indicated that the direct capitalization method should be used. The steps required for use of the income approach with direct capitalization may be summarized as (1) estimate potential gross income; (2) deduct estimated vacancy and collection loss to determine effective gross income; (3) deduct estimated expenses to determine net operating income; (4) divide net operating income by an estimated capitalization rate to yield indicated value. *The Appraisal of Real Estate* 12th Edition, The Appraisal Institute, 2001, pp. 493 - 494. A variety of techniques may be used to quantify various components of any application of the approach. *Supra*, at chs 20-24, (2001). The Commission has no evidence of expenses that might be attributable to the subject property. One "expense" item is certain and that is taxes. Taxes are not however treated as a typical "expense" item when the income approach is used. When property is valued for ad valorem tax purposes, taxes should not be considered an expense item." *Property Assessment Valuation, 2nd Ed.*, International Association of Assessing Officers, 1996, p. 240. The preferred approach is to add the tax rate to a base rate resulting in a "loaded" capitalization rate. *Property Assessment Valuation, 2nd Ed.*, International Association of Assessing Officers, 1996, p. 233. The capitalization rate employed by the Taxpayer's Vice President was not supported by analysis of market rates and did not conform to generally accepted appraisal methodology. The indication of value derived from the income approach is not clear and convincing evidence of actual value as of the assessment date.

The Taxpayer has not shown by clear and convincing evidence that the decisions of the County Board were unreasonable or arbitrary even if they were preceded by a difficult and confusing process.

**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 decisions of the County Board are unreasonable or arbitrary and the decisions of the County Board should be affirmed.

**VI.
ORDER**

IT IS THEREFORE ORDERED THAT:

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

06SV-001

Land value \$950,000.00

Total value \$950,000.00

Case No.06SV-00

Land value \$1,390,000.00

Total value \$1,390,000.00.

3. This decision, if no appeal is timely filed, shall be certified to the Dodge County Treasurer, and the Assessment Manager for Dodge County, 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 22, 2007.

Signed and Sealed. March 22, 2007.

Wm. R. Wickersham, Commissioner

Susan S. Lore, 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.