

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

THOMAS W. MAYO,	)	
	)	
Appellant,	)	Case No 06A-010
	)	
v.	)	DECISION AND ORDER REVERSING
	)	THE DECISION OF THE CUSTER
CUSTER 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 Thomas W. Mayo ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Holiday Inn Express, 2605 Plum Creek Parkway, Lexington, NE, Nebraska, on April 5, 2007, pursuant to an Order for Hearing and Notice of Hearing issued January 18, 2007. Commissioners Wickersham, Warnes, and Sorensen were present. Commissioner Wickersham presided at the hearing.

Thomas W. Mayo, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Glenn A. Clark, a Deputy County Attorney for Custer County, Nebraska, appeared as legal counsel for the Custer 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 taxable value of the subject property as of January 1, 2006, is less than taxable value as determined by the County Board. 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?

What was 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. Taxable value of the subject property placed on the assessment roll as of January 1, 2006, ("the assessment date") by the Custer County Assessor, value as proposed in a timely protest, and taxable value as determined by the County Board is shown in the following table:

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Description: NE<sup>1</sup>/<sub>4</sub> except 2<sup>1</sup>/<sub>2</sub> acres Cemetery, Section 17, Township 19, Range21, Custer County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$209,832.00	\$106,130.00	\$193,942.00
Home Site	\$6,200.00	\$	\$6,200.00
Residence	\$47,148.00	\$47,040.00 includes outbuildings	\$47,148.00
Farm Site	\$1,500.00	\$	\$1,500.00
Outbuilding	\$30,696.00	\$	\$30,696.00
Total	\$295,376.00	\$153,670.00	\$279,486.00

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 18, 2007, set a hearing of the appeal for April 5, 2007, at 8:00 a.m. CDST.
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. Taxable value of the subject property as of the assessment date for the tax year 2006 is:

Agricultural land	\$193,942.00
Home Site	\$ 6,200.00
Residence	\$ 47,148.00
Farm Site	\$ 1,500.00
Outbuildings	<u>\$ 29,196.00</u>
Total	<u><u>\$277,986.00.</u></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. Qualified agricultural land and horticultural land shall be valued for purposes of taxation at eighty percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2003).
9. Qualified agricultural land and horticultural land means land which is primarily used for the production of agricultural or horticultural products, including wasteland lying in or adjacent to and in common ownership or management with land used for the production of agricultural or horticultural products. Land retained or protected for future agricultural or horticultural uses under a conservation easement as provided in the

Conservation and Preservation Easements Act shall be defined as agricultural land or horticultural land. Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land. Land that is zoned predominantly for purposes other than agricultural or horticultural use shall not be assessed as agricultural land or horticultural land. Neb. Rev. Stat. §77-1359 (1) (Reissue 2003).

10. Agricultural or horticultural products include grain and feed crops; forages and sod crops; animal production, including breeding, feeding, or grazing of cattle, horses, swine, sheep, goats, bees, or poultry; and fruits, vegetables, flowers, seeds, grasses, trees, timber, and other horticultural crops. Neb. Rev. Stat. §77-1359 (2) (Reissue 2003).
11. No residential, commercial, industrial, or agricultural building or enclosed structure or the directly associated land or site of the building or enclosed structure shall be assessed as qualified agricultural or horticultural land. Neb. Rev. Stat. §77-1361 (2) (Reissue 2003).
12. 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).
13. 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).

14. 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)
15. 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).
16. "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).
17. 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).
18. 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).

19. “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).
20. The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998).
21. A Taxpayer, who only produced evidence that was aimed at discrediting valuation methods utilized by county assessor, failed to meet burden of proving that value of her property was not fairly and proportionately equalized or that valuation placed upon her property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).
22. Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981).

#### **IV. ANALYSIS**

The subject property is an improved parcel with 153 acres of agricultural land and horticultural land. (E10). Improvements on the subject property are a residence, 2 Quonsets, a shed and a grain bin. (E10). The Taxpayer contends that the contribution of value made by the



residence should be \$27,000. The County Board determined that the contribution to value made by the residence was \$47,148.00 (E10:2). The Taxpayer also contends that the contribution to value of the land component of the subject property should be based on its purchase price in 2001 from his father in law.

The Taxpayer's opinion that the contribution to value made by the residence on the subject property is less than the amount determined by the County Board is based on the sale of a residence in Broken Bow. (E5:1) the following basis for comparisons can be made based on information in Exhibits 5 and 10

	Subject (E10)	Comparable (E5)
Year Built	1895	1920
Effective age		50 years
Condition		Average
Quality	Average	Fair
Style	1½ Story	1½ Story
Total area	1,310 sq. ft.	1,132 sq. ft.
Basement	80 sq ft unfinished	920 sq ft crawl area
Location	Rural Custer County	Broken Bow

“Comparable properties” share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation, 2<sup>nd</sup> Ed.*, International Association of Assessing Officers, 1996, p. 98. When using “comparables” to determine value, similarities and differences between the subject property and the comparables must be recognized. *Property Assessment Valuation, 2<sup>nd</sup> Ed.*, 1996, p.103. Most

adjustments are for physical characteristics. *Property Assessment Valuation*, 2<sup>nd</sup> Ed., 1996, p.105. The apparent differences between the residence on the subject property and the offered comparable do not allow for an unadjusted comparison of the two parcels. No adjustments were proposed to the Commission that would account for the differences in size, age, or quality. The Commission also notes that sale of the comparable included land and no adjustment to the sale price for the land was suggested leaving the contribution to value of the improvements in the sale an open question. Even though the contribution to value of the improvements in the sale of the comparable is an open question it is suggested that we compare it to the residential improvement that is part of the subject property. The Commission is unable to conclude from the evidence that the contribution to value of the residence that is part of the subject property should be \$27,000 as proposed by the Taxpayer.

The Taxpayer's opinion concerning the contribution to value made by the agricultural land and horticultural land is based on its purchase price in 2001 from his father in law and the average taxable value of two nearby parcels. The purchase price of property may be taken into consideration in determining the actual value, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value. *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998). The evidence in this instance is that the sale occurred nearly five years prior to the assessment date at issue in this proceeding, that the subject property had not been listed for sale nor had its availability for

purchase been advertised in any other way. There is a close relationship between the seller and the purchaser. The 2001 purchase price of the subject property is not persuasive evidence of its actual value as of January 1, 2006.

The Taxpayer' opinion of actual value of the subject property was also based on the average taxable value of other parcels containing agricultural land and horticultural land. (E4) The Taxpayer presented evidence of the taxable "assessed" value of various parcels one of which was the subject property. The Taxpayer contends that the actual or fair market value of the subject property should be determined based on the taxable or "assessed" value per square foot of the other parcels. A Taxpayer wishing to use taxable "assessed" values to prove actual or fair market value has three tests to meet; proof that the method is a professionally approved mass or fee appraisal approach; appropriate application of the approach and reliability of the evidence.

Methods through which a determination of actual value may be made for mass appraisal and assessment purposes are identified in Nebraska Statutes and include the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods. Neb. Rev. Stat. §77-112 (Reissue 2003). A comparison of assessed values is not identified in the Nebraska Statutes as an accepted approach for a determination of actual value for purposes of mass appraisal. *Id.* Because the method is not identified in statute proof of its acceptance as an appraisal method would have to be produced. *Id.* No evidence has been presented to the Commission that comparison of assessed values is a professionally accepted mass or fee appraisal approach.

In the sales comparison approach, a sale price is an indication of actual value for a sold property but has to be adjusted to account for differences between properties to become an indicator of market value for another property. *The Appraisal of Real Estate*, Twelfth Edition, Appraisal Institute, Chs 17, 18, 19, (2001). If the “taxable ‘assessed’ value comparison approach” was shown to be a professionally accepted method of appraisal, an analysis of differences and adjustments to the taxable “assessed” value of comparison properties would be necessary to obtain an indication of value for a subject property. No adjustments or analysis of adjustments necessary to compensate for differences between the subject property and the taxable “assessed” values of other parcels was presented. The evidence of the contribution of contribution to value made by the agricultural land and horticultural and is not persuasive.

Subsequent to the County Boards decision it made a correction to the assessment rolls for the subject property. (E10:1). The correction was a reduction in the contribution to value of improvements in the amount of \$1,500.00. The appeal in this case is based on the County Board’s decision that taxable value of the subject property was \$279,486.00. Taxable value after correction by the County Board on a subsequent date is \$277,986. (E10:1). So that the effect on value of the correction is not lost, the Commission must reverse the decision of the County Board determining that taxable value of the subject property was \$279,486.00, and order that taxable value of the subject property is \$279,486.00.

## 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 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 reversed.

2. Taxable value of the subject property for the tax year 2006 is:

Agricultural land	\$193,942.00
Home Site	\$ 6,200.00
Residence	\$ 47,148.00
Farm Site	\$ 1,500.00
Outbuildings	<u>\$ 29,196.00</u>
Total	<u><u>\$277,986.00.</u></u>

3. This decision, if no appeal is timely filed, shall be certified to the Custer County Treasurer, and the Custer 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 on May 8, 2007.

**Signed and Sealed.** May 8, 2007.

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Wm. R. Wickersham, Commissioner

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Ruth A Sorensen, Commissioner

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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.**