

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

QUAIL RUN APARTMENTS, LLC,)	
)	
Appellant,)	Case Nos 06C-061, 06C-062, 06C-063, &
)	06C-064
v.)	
)	DECISION AND ORDER REVERSING
WASHINGTON COUNTY BOARD OF)	THE DECISIONS OF THE
EQUALIZATION,)	WASHINGTON COUNTY BOARD OF
)	EQUALIZATION
Appellee.)	

The above-captioned cases were called for a hearing on the merits of appeals by Quail Run Apartments, LLC ("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 13, 2007, pursuant to an Order for Hearing and Notice of Hearing issued December 6, 2006. Commissioners Wickersham, Warnes, and Lore were present. Commissioner Wickersham presided at the hearing.

Jared W. Hollinger, as Member Manager of the Taxpayer was present at the hearing. Thomas J. Young appeared as legal counsel for the Taxpayer.

Edmond E. Talbot III, a Deputy County Attorney for Washington County, Nebraska, appeared as legal counsel for the Washington 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?

**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 are described below by parcel number and a legal description as it appears on the property record card. Together all parcels constitute the ("subject property"). A complete legal description of the subject property, in two parcels, is shown in Addendum "A"
3. Actual value of each parcel of the subject property placed on the assessment roll as of January 1, 2006, ("the assessment date") by the Washington County Assessor, value as

proposed in timely protests, and actual value as determined by the County Board is shown in the following tables:

Case No. 06C-061, 06C-062, 06C-063 and 06C-064

Description: Parcel ID #s 890056497 (BCN-EFF-S-3-1), 890080437 (B18-11-11-TL-649), 89081263 (B18-11-11-TL-648), and 890081256 (BCN-EFF-A-3-2)see Addendum "A" for complete legal description, Washington County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	all parcels \$ 159,705.00	all parcels \$ 159,705.00	all parcels \$ 159,705.00
Improvements	all parcels \$3,066,785.00	all parcels \$1,814,295.00	all parcels \$3,066,785.00
Total	all parcels \$3,226,490.00	all parcels \$1,974,000.00	all parcels \$3,226,490.00

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 Amended Order for Hearing and Notice of Hearing issued on December 6, 2006, set a hearing of the appeals for March 13, 2007, at 1:00 p.m. CST.
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 the subject property for the tax year 2006 is \$2,700,000.00.

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. 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 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).
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. 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).
16. 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).

17. 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).
18. 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 comprised of four parcels as maintained in the records of the County Assessor. Addendum “A” contains a description of the subject property in two parcels. The parties have agreed that the tracts described in Addendum “A” comprise all of the land described in the four parcels for which records are maintained by the County Assessor. Two of the parcels maintained by the County Assessor are unimproved and two are highly improved. Improvements are 72 apartment units in three buildings and five garage buildings with 34 units. The complex was built in 1995 and 1996 in two parts Quail Run I and Quail Run II.

The Taxpayer contracted to purchase the subject property in December 20, 2005, for \$1,825,000.00. (E6:1). The Quail Run I portion of the subject property had been subject to a foreclosure action brought by U.S. Bank National Association immediately prior to its purchase by the Taxpayer. (E6). The Sale to the Taxpayer of both portions identified as Quail Run I and

Quail Run II was made by Sandtrap Properties Inc., a subsidiary of U.S. Bank National Association. (E6). The Taxpayer argues that its purchase price is the actual value of the subject property as of January 1, 2006. The purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, 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 subject property was subject to various restrictions as a qualified low income housing project prior to foreclosure. (E12 and 13). After foreclosure the subject property was not subject to those restrictions except for a requirement that low income qualified tenants could remain tenants for three years after the foreclosure at the rents current on the date of foreclosure. (E13 and 14). Purchase of the subject property by the Taxpayer could only be concluded after the completion of two foreclosure proceedings one of which was still pending at the time the purchase agreement was reached. (E12)..

An appraiser for the Taxpayer testified that low income rents and market rents were comparable. The Taxpayer's appraiser had prepared an appraisal for First Community Bank. That appraisal indicated that actual value of the subject property as of June 27, 2005, subject to low income restrictions, was \$2,100,000. (E32:2). The appraiser also opined that if the subject property were leased at market rents that its fair market value as of June 27, 2005 would be \$2,600,000. (E32:2). The Commission does not find there is sufficient evidence to

conclude that the sale price of the subject property on December 20, 2005 was equivalent to its actual value as of January 1, 2006.

The Taxpayer's appraiser prepared a second appraisal opining that fair market value of the subject property as of January 1, 2006 was \$2,700,000. (E17:2). The appraisal describing the basis for that opinion discloses use of the cost approach, the income approach and the sales comparison approach, and a reconciliation of those approaches. (E17)

An appraiser for the County testified that the subject property had been revalued for assessment purposes for the tax year 2002. The County's appraiser also testified that taxable values as determined for the tax year 2005 for the subject property had not been adjusted because nothing had been observed in the general market to call for a reappraisal of apartment complexes in the County. The County's appraiser also testified that he was aware of the foreclosure action and sale of the subject property. The County Board was also aware of the sale to the Taxpayer. (E1,2,3, and 4). The foreclosure sale as noted resulted in a significant reduction of the use restrictions applicable to the subject property. The Taxpayer's member manager testified that after purchase \$100,000 had been spent on deferred maintenance and that expenditure of another \$100,000 was needed. The Taxpayer's appraiser had observed deferred maintenance. (E17:29). The subject property had been subject to a foreclosure action in 2005, maintenance had been deferred, and the conditions under which it could be operated changed significantly as a result of the foreclosure. Given the evidence presented to the Commission, the County Board's determination of actual value equal to a determination of actual value for the tax year 2002, without consideration of the changes which had occurred in the operation and condition of the subject property was unreasonable.

The opinion of the Taxpayer's appraiser supported by the appraisal introduced as Exhibit 17 is sufficient evidence for a determination that actual value of the subject property as of January 1, 2006, was \$2,700,000.

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

**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 vacated and reversed.
2. Actual value of the subject property for the tax year 2006 is \$2,700,000.00. The County Assessor may allocate a portion of actual value as determined to each parcel which is a part of the subject property.

3. This decision, if no appeal is timely filed, shall be certified to the Washington County Treasurer, and the Washington 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 16, 2007.

Signed and Sealed. May 16, 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.