

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

STEVEN A. SCHILLER,	)	
	)	
Appellant,	)	Case No 06R-006
	)	
v.	)	DECISION AND ORDER AFFIRMING
	)	THE DECISION OF THE DOUGLAS
DOUGLAS 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 Steven A. Schiller ("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 28, 2007, pursuant to an Order for Hearing and Notice of Hearing issued January 23, 2007. Commissioners Wickersham, Warnes, and Lore were present. Commissioner Warnes presided at the hearing.

Steven A. Schiller, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Kristin M. Lynch, a Deputy County Attorney for Douglas County, Nebraska, appeared as legal counsel for the Douglas 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 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 Douglas County Assessor, value as proposed in a timely protest, and actual value as determined by the County Board is shown in the following table:

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Description: RIDGEFIELD 1ST LOT 27 BLOCK 0 IRREG, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 26,500.00	\$0.00	\$26,500.00
Improvement	\$ 293,400.00	\$ 00.00	\$293,400.00
Total	\$ 319,900.00	\$ 273,000.00	\$ 319,900.00

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 23, 2007, set a hearing of the appeal for March 28, 2007, at 11:00 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. Actual value of the subject property as of the assessment date for the tax year 2006 is:

Land value           \$ 26,500.00  
Improvement value   \$ 293,400.00  
Total value           \$ 319,900.00.

**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**

This appeal is of both the actual value and the equalization of taxable value of the subject property. The subject property is an improved residential lot in Omaha, Douglas County, Nebraska. The improvement is a two story 2,774 square foot house built in 1984.

The Taxpayer alleges that the "property two doors to his right and left have a substantially lower valuation based on square footage" (Exhibit 13:1). He also objects to the criticism of the referee coordinator that his comparables are larger in square footage by some 400 to 850 square feet (Exhibit 13:3). Lastly, the Taxpayer alleges that the comparables used by the County Assessor are not "equivalent" (Appeal Form in Case File).

The Commission notes that the referee recommended an assessed valuation of \$299,500 (Exhibit 3:2). The land component's contribution to value in that recommendation is \$26,500.

At the outset of the Commission's review of the evidence provided, it is noted that the subject property has not been reassessed for valuation since 1999 when its valuation was assessed at \$224,600. The land component's contribution to value as determined by the Assessor has remained the same through the 2006 tax year at \$26,500.

**A.  
ACTUAL VALUE OF THE SUBJECT PROPERTY**

The Taxpayer provided five comparable properties for his property. He believes that his comparables are more similar to the subject property than the County's comparables for several reasons. These reasons include that the County's comparables are located more than a quarter mile away from his property and they have amenities different from his property. The Taxpayer's comparable properties and those used by Douglas County on their first assessment



report are itemized on Exhibit 2:2. The Taxpayer testified that the two properties referred to by him in his protest and which are located two doors down on either side of his property are the Carpino and the Hilgers property. The Carpino property is located at 1324 N 131 CIR and is found at Exhibit 5:2. The Hilgers property is located at 1331 N 131 CIR and is found at Exhibit 5:4. The Taxpayer did not provide the property record file for any of his comparable properties as required by the Commission's Order for Hearing. The exhibits provided by the Taxpayer are "screenshots" taken off of the Douglas County Assessor's website. These exhibits do not provide a complete description of the amenities that the properties possess.

“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. “Financing terms, market conditions, location, and physical characteristics are items that must be considered when making adjustments . . .” *Property Assessment Valuation*, 2<sup>nd</sup> Ed., 1996, p. 98.

When considering the land component of real property, “comparable” properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location. *Property Assessment Valuation*, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, p. 70 - 76.

The Taxpayer asserted that the assessed value of the two residential parcels described in Exhibits 5:2 and Exhibit 5:4 supported his contention that the subject property should have a lower assessed value. The screen shots provided do not contain sufficient description of the various properties. 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 Commission is unable to compare the comparables provided by the Taxpayer with the subject property without the property record files for each property. The Commission notes however, that the two properties referred to by the Taxpayer are different in several significant features. The following table demonstrates these differences.

	Subject Property (E 6:3)	1324 N. 131 CIR (E 5:3)	1331 N. 131 CIR (E 5:5)
Building Size (Square Feet)	2,774	3,574	3,211
Garage Size (Square Feet)	863	528	667

The Commission finds that the differences shown above in this table show the dissimilarities between the properties and there would have to be adjustments for these differences in order to obtain a valid comparison of per square foot valuation. In addition, the Commission cannot tell if any of the comparable properties have swimming pools, decks, etc. all of which amenities would have been shown on the property record files. The Taxpayer testified that his property has a third garage stall which the Carpino property does not; however, the Carpino property has a swimming pool which his property does not.

The Taxpayer testified that another property that was comparable to his and should be reviewed by the Commission was the Galles property at 12931 Lafayette Ave. Once again

only a screen shot was provided for this property, but without the property record file it is not possible to make a comparison.

The Taxpayer cannot be granted relief on the issue of actual value based on the lack of evidence provided to the Commission.

**B.  
EQUALIZED TAXABLE VALUE**

The Taxpayer did not provide any evidence of actual value for any comparable properties. In order to show that the subject property was not assessed equally and proportionately with other comparable properties, it is necessary to examine the ratio of the actual value of a property to its taxable value. No evidence of actual value different than the actual value as determined by the Assessor was provided. The Commission cannot grant any relief based on the issue of equalization from the evidence provided.

**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	\$ 26,500.00
Improvement value	<u>\$ 293,400.00</u>
Total value	<u><u>\$ 319,900.00.</u></u>
3. This decision, if no appeal is timely filed, shall be certified to the Douglas County Treasurer, and the Douglas 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 May 4, 2007.

**Signed and Sealed.** May 4, 2007.

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Wm. R. Wickersham, Commissioner

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Susan S. Lore, 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.**