

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

MERLIN G. BRENDEN,)	
)	
Appellant,)	Case No 06R-169
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE HOWARD
HOWARD 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 Merlin G. Brenden ("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, Nebraska, on April 2, 2007, pursuant to an Order for Hearing and Notice of Hearing issued January 17, 2007. Commissioners Wickersham, Warnes, and Lore were present. Commissioner Warnes presided at the hearing.

Merlin G. Brenden, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

David T. Schroeder, County Attorney for Howard County, Nebraska, appeared as legal counsel for the Howard 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?

**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 Howard 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: W 1/2 NW 1/4 of Section 5, T 15, R 9 (2 acres), Howard County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 13,000.00	\$ 13,000.00	\$ 13,000.00
Improvement	\$231,781.00	\$191,655.00	\$231,781.00
Total	\$244,781.00	\$204,655.00	\$244,781.00

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 17, 2007, set a hearing of the appeal for April 2, 2007, at 2:00 p.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	\$ 13,000.00
Improvement value	<u>\$231,781.00</u>
Total value	<u>\$244,781.00.</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. 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. “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 of the valuation only of the subject property. The Taxpayer does not dispute the valuation of the land component.

The Taxpayer contends that the contributions to value made by the improvements to the subject property should be reduced for the following reasons. First, the subject property is 30 miles from the nearest municipality. Six miles of the access road is gravel. Second, the rising price of motor fuel is reducing value due to the distance of commute of potential buyers in Grand Island. Third, new construction costs are less than the calculated contribution to value of improvements on the subject property. Lastly, the Taxpayer asserts that the alleged value of other comparable properties in the area of the subject property justifies a reduction in the assessed value of the subject property. The Taxpayer offered as evidence of the diminished value of his property the fact that he had attempted to sell the subject property for the past ten years.

The Commission notes that the listings for sale, Exhibit 13:2 and Exhibit 13:3, contain different descriptions of the property offered for sale. It appears to the Commission that Exhibit

13:2 includes in addition to the subject property, an additional 80 acres of land directly to the east of the subject property for a listing price of \$379,194. Exhibit 13:3 appears to be the listing for sale of the subject property plus 40 acres plus all of the out buildings for \$400,000. These listings are at best confusing and do not offer proof of actual value since there was no sale.

The subject property is an improved parcel with a residence and outbuildings located on a two acre tract. The property record file, Exhibit 3:2 for the subject property indicates that the house was built in 1991 and has 2,296 square feet of living area. In addition, the improvement includes a 1,552 square-foot basement, 1,304 square feet of which is partially finished.

The Taxpayer did not provide any evidence of valuation by use of comparables. The Taxpayer did testify that there were no improvements on the two acre parcel of land except for the house and a pump house listed as item number nine on Exhibit 3:4. The Taxpayer testified that the improvements other than the residence and pumphouse shown on Exhibit 3:4 were on his adjacent property and he did not request that the Commission remove these additional improvements/rural outbuildings from the taxation of the subject property.

The Commission is without any evidence of value provided by the Taxpayer in the form of comparable properties which have sold and thus cannot grant relief. The appeal of the Taxpayer is denied.

V. CONCLUSIONS OF LAW

1 The Commission has subject matter jurisdiction.

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	\$ 13,000.00
Improvement value	<u>\$231,781.00</u>
Total value	<u>\$244,781.00.</u>
3. This decision, if no appeal is timely filed, shall be certified to the Howard County Treasurer, and the Howard 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.

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.