

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

LARRY D. SIMONEAU,)	
)	
Appellant,)	Case No 06R-249
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE CASS COUNTY
CASS COUNTY BOARD OF)	BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Larry D. Simoneau ("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 27, 2007, pursuant to an Order for Hearing and Notice of Hearing issued January 16, 2007. Commissioners Wickersham, Warnes, and Lore were present. Commissioner Warnes presided at the hearing.

Larry D. Simoneau, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Nathan B. Cox, County Attorney for Cass County, Nebraska, appeared as legal counsel for the Cass 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 Cass County Assessor, value as proposed in a timely protest, and actual value as determined by the County Board is shown in the following table:

Case No. 06R-249

Description: ROCK BLUFF -- LOTS 5 TO 8 2N 2W, LOTS 3 TO 7 1N 2W LOTS 1 - 8 2N 3W & ALL BLK 1N 3W & VAC STS 7 ALLEYS EXC R DS (6.30 ACRES), Cass County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 53,400.00	\$ 30,255.00	\$ 53,400.00
Improvement	\$ 40,408.00	\$ 23,566.00	\$ 40,408.00
Outbuilding	\$6,046.00	\$0.00	\$6,046.00
Total	\$ 99,854.00	\$ 53,821.00	\$ 99,854.00

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 16, 2007, set a hearing of the appeal for March 27, 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	\$ 53,400.00
Improvement value	\$ 40,408.00
Outbuilding	\$ 6,046.00
Total value	<u>\$ 99,854.00.</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 of the Taxpayer's residence, outbuildings and acreage of 7.3 acres. The taxpayer considers the subject property to be his permanent home. On his acreage he has horses and raises poultry. The feeding and watering of the animals require that

he has regular contact with the subject property, but the Commission finds that the primary use of the subject property is not for agricultural or horticultural use. The subject property is located in the village of Rock Bluff. The Taxpayer believed that Rock Bluff had been platted at one time, but the County has assessed the subject property as “rural” and not as located within a city (Exhibit 4:1).

The Taxpayer testified that his main concerns were that “nothing has changed” yet his assessed valuation had “doubled”. He pointed out to the Commission that his residence is a mobile home and is not a permanent structure. The amenities on the subject property do not include central air or forced air furnace. The subject property is serviced by rural water and there is dust from the gravel road.

The Commission notes that the assessed valuation for the subject property for 2005 was \$53, 821 (Exhibit 3:3). This is the same valuation that the Taxpayer has requested for 2006.

The prior year’s assessment is not relevant to the subsequent year’s valuation. *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 Testimony of the Taxpayer was that his once mobile home has had its wheels disconnected from the trailer and the mobile home has been located on top of cemented concrete blocks. A basement with a concrete floor was built and an underground garage exists under a portion of the home. Exhibit 3:5 is a photo of the residence taken in December, 2005, which shows the residence with the underground garage. The definition of “Real Property” is described in Neb RRS 77 - 103 (3) and includes “... Mobile homes ...which are used for residential purposes”. The Commission finds that the mobile home is now a permanent

residence on the subject property as of January 1, 2006 and is properly being assessed as real property.

The Taxpayer testified that the residence contains the original equipment of the mobile home. Exhibit 7 are photos depicting the interior of the residence. On Exhibit 3:3 the Commission notes that the Taxpayer has taken out a building permit for the subject property on June 18, 2002 for remodeling and construction of a basement. The Taxpayer testified that he had constructed a basement with an under house garage. In addition, the taxpayer changed out the windows of the residence in December of 2005 and the new windows are shown in Exhibit 3:5. The only other repairs testified to by the Taxpayer was the insurance repair of the roof of the residence in 2001. The Commission is without sufficient evidence to grant relief despite the testimony that the residence had several deficiencies.

The County provided the property record card for the subject property. The Commission notes that the County's method of assessing valuation to the land and improvements is the Cost Approach as shown on Exhibit 4:2. The Cost Approach was also used to value the contribution to value of the outbuildings. (Exhibit 45:3)

The Taxpayer did not provide any evidence of the actual value of the subject parcel or any other approved method of valuation using the cost approach. The appeal of the Taxpayer is denied.

**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	\$ 53,400.00
Improvement value_	\$ 40,408.00
Outbuildings	\$ 6,046.00
Total value	<u>\$ 99,854.00.</u>
3. This decision, if no appeal is timely filed, shall be certified to the Cass County Treasurer, and the Cass 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.