

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

| | | |
|-------------------------------|---|------------------------------|
| JACK E. MINDRUP, TRUSTEE |) | |
| of the JACK E. MINDRUP LIVING |) | |
| TRUST, |) | Case No 06R-311 |
| Appellant, |) | |
| |) | DECISION AND ORDER AFFIRMING |
| v. |) | THE DECISION OF THE DOUGLAS |
| |) | COUNTY BOARD OF EQUALIZATION |
| DOUGLAS COUNTY BOARD OF |) | |
| EQUALIZATION, |) | |
| |) | |
| Appellee. |) | |

The above-captioned case was called for a hearing on the merits of an appeal by Jack E. Mindrup, Trustee of the Jack E. Mindrup Living Trust ("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 November 9, 2007, pursuant to an Order for Hearing and Notice of Hearing issued August 8, 2007. Commissioners Wickersham, Warnes, and Hotz were present. Commissioner Warnes presided at the hearing.

Jack E. Mindrup, Trustee of the Jack E. Mindrup Living Trust, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Thomas S. Barrett, 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:

Whether the decision of the County Board determining actual value of the subject property is unreasonable or arbitrary; and

The 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 to which this appeal pertains is described in the table below ("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:

Case No.

Description: RENNER GARDENS LOT 12 BLOCK 0 IRREG, Douglas County, Nebraska.

| | Assessor Notice Value | Taxpayer Protest Value | Board Determined Value |
|-------------|-----------------------|------------------------|------------------------|
| Land | \$ 4,400.00 | Included in Total | \$ 4,400.00 |
| Improvement | \$ 98,200.00 | Included in Total | \$89,600.00 |
| Total | \$102,600.00 | \$ 85,000.00 | \$94,000.00 |

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 August 8, 2007, set a hearing of the appeal for November 9, 2007, at 1:00 p.m. CST.
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 | \$ 4,400.00 |
| Improvement value | <u>\$ 89,600.00</u> |
| Total value | <u>\$ 94,000.00.</u> |

**III.
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in the above captioned appeal 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 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).

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 (8) (Cum. Supp. 2006), and e.g. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
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).
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

property was not fairly and proportionately equalized or that valuation placed upon 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

This appeal disputes the actual value of the subject property for the year 2006.

The subject property is a residential lot which has been improved with a 950 square foot ranch style residence of average quality built in 1953. (Exhibit 9) The subject property has been rented by the Taxpayer since it was purchased 14 years ago. (Exhibit 9)

Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach, (2) income approach, and (3) cost approach. *Neb.Rev.Stat. §77 - 112 (Cum. Supp. 2002)* The Taxpayer testified that his opinion of actual value of the subject property was \$82,000 on January 1, 2006. The Taxpayer used a method of the income approach of valuation known as Gross Monthly Rent Multiplier (GMRM), to determine the actual value of the subject property. This method is an acceptable use of the income approach to valuation. *Income Property Valuation*, by Fisher and Martin, Dearborn Publishing, Inc., 1994, page 193.

The Commission finds that there are deficiencies in the valuation developed by the Taxpayer using the GMRM valuation method. First, there was no evidence produced by the Taxpayer as to comparable rents from comparable properties. Second, the Taxpayer did not produce any evidence in support of how the Gross Rent Multiplier (GRM) of 10 was derived. There were no comparable sales provided by the Taxpayer of rented properties which sold in the recent past provided as evidence from which a GRM could be derived nor evidence as to whether there were any such sales available. The absence of evidence in support of the GRM or evidence of the contract rent as market rent is not clear and convincing evidence of value.

The Taxpayer testified that there were several factors that he believed reduced the actual value of the subject property. These factors included that the street in front of the subject property was closed down for five blocks from Franklin Street to Western Ave. It had been open initially, but problems arose with the water table from the adjacent creek. In addition, the water table was very high due to the angle of the street causing the basement of the subject property to leak and reduces its desirability to a potential purchaser. In addition, the Taxpayer alleged that the desirability of the subject property was further reduced by the roof needing repair, lack of curb and storm sewers and the street was without paving. The Taxpayer did not provide any evidence quantifying in dollars the reduction in actual value attributable to these negative factors.

A taxpayer who offers no evidence that the subject property is valued in excess of its actual value and who only produces evidence that is aimed at discrediting the valuation methods utilized by county assessor fails to meet his or her burden of proving that the value of the property was not fairly and proportionately equalized or that valuation placed upon the

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).

The Taxpayer testified that a parcel which he alleged was comparable to the subject property sold in November of 2006. This parcel was located at 1009 Mayfield. The Taxpayer's testimony was that this alleged comparable parcel was a corner lot and was located on the east side of Mayfield, both factors being alleged to be an addition to actual value. The assessed taxable value of this property for 2006 was alleged to be \$92,500 versus the taxable value of the subject property for 2006 of \$94,000. The Taxpayer did not provide the property record file for this alleged comparable parcel and the Commission is without the required evidence to make any comparison of the subject parcel to that parcel.

For the reasons stated above, 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 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 | \$ 4,400.00 |
| Improvement value | <u>\$ 89,600.00</u> |
| Total value | <u>\$ 94,000.00.</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 on November 29, 2007.

Signed and Sealed. November 29, 2007.

Wm. R. Wickersham, Commissioner

Robert W. Hotz, Commissioner

William C. Warnes, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.