

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

TEAL LAKE HOMEOWNER'S ASSOCIATION,)	
)	
)	Case No 06R-416
Appellant,)	
)	DECISION AND ORDER AFFIRMING
v.)	THE DECISION OF THE LINCOLN
)	COUNTY BOARD OF EQUALIZATION
LINCOLN COUNTY BOARD OF EQUALIZATION,)	
)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by the Teal Lake Homeowner's Association ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Hampton Inn, 200 Platte Oasis Parkway, North Platte, Nebraska, on August 21, 2007, pursuant to an Order for Hearing and Notice of Hearing issued April 16, 2007. Commissioners Wickersham, Warnes, and Salmon were present. Commissioner Wickersham presided at the hearing.

Deanna L. Trierweiler, President of the Taxpayer was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Joe W. Wright, a Deputy County Attorney for Lincoln County, Nebraska, appeared as legal counsel for the Lincoln 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 affirming an allocation of actual value to the subject property made by the county assessor is unreasonable or arbitrary; and

The allocable actual value of the subject property.

The Taxpayer has asserted that taxable value of the subject property as allocated to it by the county assessor and affirmed by the County Board, is not equalized with the taxable value of other real property. The issues on appeal related to that assertion are:

Whether the decision of the County Board affirming the equalized taxable value allocated to the subject property by the county assessor is unreasonable or arbitrary; and

The equalized taxable value allocable to the subject property.

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 Lincoln 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-416

Description: Trierweiler First Subdivision, Lot 12, Block 1, North Platte, Lincoln County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$117,225.00	\$ 6,519.00	\$117,225.00
Improvement	Unimproved	Unimproved	Unimproved
Total	\$117,225.00	\$ 6,519.00	\$117,225.00

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 April 16, 2007, set a hearing of the appeal for August 21, 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	\$117,225.00
Improvement value	<u>Unimproved</u>
Total value	<u>\$117,225.00.</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. “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, 303 N.W.2d 307 (1981).
14. If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgement. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity. *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).
15. 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).
16. 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).

17. 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).
18. 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).
19. "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).
20. 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).

21. 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).
22. 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).
23. 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).
24. 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).
25. 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).

26. A county assessor is required to set off and apportion to each its just and equitable portion of the assessment if a parcel has been assessed and thereafter part or parts are transferred to a different ownership. See. Neb. Rev. Stat. §77-1311 (Supp. 2005).
27. "(1) On or before March 19 of each year, the county assessor or county clerk shall make up an assessment roll of the taxable real property in the county. (2) The county assessor or county clerk shall enter in the proper column, opposite each respective parcel, the name of the owner thereof so far as he or she is able to ascertain the same. The assessment roll shall contain columns in which may be shown the number of acres or lots and the value thereof, the improvement and the value thereof, the total value of the acres or lots and improvements, and the improvements on leased lands ant the value and owner thereof and such other columns as may be required." Neb. Rev. Stat. §77-1305 (Supp. 2005).
28. "(1) All real property in this state subject to taxation shall be assessed as of January 1 at 12:01 a.m., which assessment shall be used as a basis of taxation until the next assessment. (2) The county assessor shall complete the assessment of real property on or before March 19 of each year." Neb. Rev. Stat. §77-1301 (Cum. Supp. 2004).
29. "The current year's assessed valuation of any real property shall not be changed by the county assessor after March 19 except by action of the Tax Equalization and Review Commission or the county board of equalization." Neb. Rev. Stat. §77-1315.01 (Supp. 2005).

30. "On or before June 1, the county assessor shall notify the owner of record as of May 20 of every item of real property which has been assessed at a value different than in the previous year." Neb. Rev. Stat. §77-1315 (Supp. 2005).

IV. ANALYSIS

The subject property is a 10.5 acre parcel described in a plat filed on April 26, 2006. (E2:12 and E3:2).

The subject property was undefined as of January 1, 2006. As of January 1, 2006, the subject property was an undefined part of Lot 3 West Lakeland Estates Second Addition. On April 26, 2006, land contained in Lot 3 West Lakeland Estates Second Addition was replated as Trierweiler First Subdivision. (E2:11 and 12). The subject property was described by that replat.

Actual value of Lot 3 West Lakeland Estates Second Addition as of January 1, 2006, as determined and certified by the assessor on or before March 19, 2006, was \$257,670.00. (E2:5, 41 and 42). The value at issue in this appeal was allocated from actual value determined for Lot 3 West Lakeland Estates Second Addition to the subject property by the county assessor after transfer of Lot 8 Block 1 Trierweiler First Subdivision on April 28, 2006. (E2:5).

Allocation of actual value to the subject property was required by the provisions of section 77-1311 of Nebraska Statutes. The portion of actual value for Lot 3 West Lakeland Estates Second Addition as allocated to the subject property by the county assessor was protested to the county board of equalization pursuant to Neb. Rev. Stat. §77-1502 (Cum. Supp. 2006). (E2:41 and E3:2).

A variety of actions and transfers concerning the subject property took place after January 1, 2006. The position of the Taxpayer is that those actions and transfers affected actual value and the equalized taxable value of the subject property.

In Nebraska the assessment and valuation of property, as well as the subject of taxation generally is a matter for the Legislature, whose power with respect thereto is plenary, except as limited by the Constitution. *Lynch v. Howell*, 165 Neb. 525, 86 N.W.2d 364 (1957). *American Provenance of the Servants of Mary Real Estate Corporation v. Douglas County et al.*, 147 Neb. 485, 23 N.W.2d 714 (1946). *Hacker v. Howe*, 72 Neb. 385, 101 N.W. 255 (1904). The plain language of an unambiguous statute will not be interpreted. *Burlington Northern and Santa Fe Ry. Co. v. Chaulk*, 262 Neb. 235, 631 N.W.2d 131 (2001). Nebraska's statute governing the date of assessment reads "All real property in this state subject to taxation shall be assessed as of January 1 at 12:01 a.m., which assessment shall be used as a basis of taxation until the next assessment." Neb. Rev. Stat. 77-1301(1) (Cum. Supp. 2004). "Assessment means the act of listing the description of all real property and taxable tangible personal property, determining its taxable value and placing it on the assessment role." Neb. Rev. Stat. 77-123 Cum. Supp.2004). The statutes unambiguously require the determination of taxable value of real property as of January 1, at 12:01 a.m..

The value determined as of January 1, of each year is placed on the assessment rolls on or before March 19 of each year. Neb. Rev. Stat. §77-1301 (Cum. Supp. 2004). Value as placed on the assessment rolls may be changed by the Assessor after March 19 due to actions of the county board of equalization or the Tax Equalization and Review Commission. Neb. Rev. Stat. §77-1315.01 (Supp. 2005). Property may be added to the assessment rolls and corrections

made for clerical errors by action of the county board of equalization after March 19 of each year. Neb. Rev. Stat. §77-1507 (Cum. Supp. 2006). The statutory framework is clear. A county assessor may not change value placed on the assessment rolls without action by a county board of equalization or the Tax Equalization and Review Commission. Changes in ownership or division of a parcel assessed as of January 1 of each year can be recognized by a county assessor.

Statutes require that notice of the change be given to the owner of record as of May 20 of that year if the assessed value of a parcel is changed from the prior year. Neb. Rev. Stat. §77-1315 (Supp. 2005). That section does not require or allow changes to assessed value because of a change of ownership it only requires notice of a change in value to the owner as of May 20 of each year.

As of January 1, 2006, the subject property was an undefined part of a larger tract, Lot 3 West Lakeland Estates Second Addition. (E2:11). There is no evidence that the actual value of Lot 3 West Lakeland Estates Second Addition was not correctly determined or that its taxable value was not equalized with other parcels as of January 1, 2006. Events that are claimed to affect actual and equalized taxable value occurred after January 1, 2006, cannot be considered.

If part of a parcel assessed as of January 1 is transferred to different ownership a county assessor is required to set off and apportion to each part its just and equitable portion of the assessment. See, Neb. Rev. Stat. §77-1311 (Supp. 2005). The statute does not specify a date beyond which the county assessor may act. The only issue that is before the Commission is whether the county assessor set off or allocated a just and equitable portion of the assessed

value of Lot 3 West Lakeland Estates Second Addition to Lot 12 in Block 1 Trierweiler First Addition due to a transfer after March 19, 2006. Lot 8 Block 1 of Trierweiler First Addition was transferred by Michael W. Trierweiler and Deanna L. Trierweiler (“Trierweilers”) on April 28, 2006. (E2:5) That event required assessor action pursuant to section 77-1311 of Nebraska Statutes. Neb. Rev. Stat. §77-1311 (Supp. 2005). The Assessor allocated all value previously determined for Lot 3 West Lakeland Estates Second Addition to the lots in Trierweiler First Subdivision as shown on a plat filed March 22, 2006, based on the square footage of each lot. Lot 12 was assigned a significant portion of the value because it was the largest lot. The law requires that all value previously determined for Lot 3 West Lakeland Estates Second Addition be allocated to lots in Trierweiler First Subdivision. The Commission does not find that confirmation of the County Assessors decisions by the County Board was unreasonable or arbitrary.

Whether the lots in Trierweiler First Addition would have had different values or that the sum of the actual values of all lots would have greater or less than the actual value of Lot 3 West Lakeland Estates Second Addition had the subdivision existed as of January 1, 2006, is not before the Commission.

A second transfer of ownership of a portion of Lot 3 West Lakeland Estates Second Addition took place on May 22, 2006. On that date Trierweilers transferred Lot 12 of Trierweiler First Subdivision to Teal Lake Home Owners Association, Inc.. (E4:1). The lot was transferred in its entirety. No new allocation was required by statute. The assessor did not again reallocate value. That action was affirmed by the County Board. There is no evidence that the decision of the County Board affirming the decision of the county assessor was

unreasonable or arbitrary. The Commission again notes that the only issue before the Commission is the allocation of actual value from a larger tract to a smaller tract after a transfer.

The Commission notes that in circumstances such as those presented in this appeal that the parties to a transaction have as much opportunity to allocate tax burdens by agreement as the county assessor does through allocations of value to individual tracts. Again the issue is not revaluation of a parcel. The basic issue is how to change the incidence of tax on an already determined value.

The transfer of ownership of the subject property to the Taxpayer by Trierweilers as recorded on May 22, 2006, was not an event that required notice of a valuation change to the Taxpayer. See, Neb. Rev. Stat. §77-1315 (Supp. 2005). The Commission notes that Deanna L. Trierweiler appeared before the Commission and did not suggest that notice of any change in valuation was not given to her or Michael L. Trierweiler as required by law.

After March 19 and on or before July 25 or August 10 whichever date is applicable a county assessor is required to report to the county board of equalization any undervalued or overvalued real property. See. Neb. Rev. Stat. 77-1315.01 (Supp 2005). Based on the assessor's report, the county board of equalization may give notice of its proposed valuation change. Neb. Rev. Stat. §77-1504 (Supp. 2005). Even if Neb. Rev. Stat. 77-1504 (Supp. 2005) was applicable in this case the Taxpayer's appeal would still fail. There is not one set of rules for county assessors and another for county boards of equalization. The discussion above would be applicable whether the appeal in this instance was brought pursuant to either Neb. Rev. Stat. §77-1502 (Cum Supp.2006) or Neb. Rev. Stat. §77-1504 (Cum. Supp 2006.).

Finally the parcel that is the subject of this appeal is Lot 1 Block 12 Trierweiler First Subdivision. (E3:2). A .69 acre tract contiguous to the subject property, part of Lot 1, West Lakeland Estates Second Addition, was acquired by the Taxpayer on May 15, 2006. (E5:1 and E2:12). There is no evidence that assessment of that parcel was protested and no appeal of its assessment has been filed with the Commission. Whatever its actual value or equalized taxable value and to whomever that value should have been assessed is not before the Commission.

The Commission does not find that the Taxpayer has shown by clear and convincing evidence that the decision of the County Board was unreasonable or arbitrary. 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 \$117,225.00

Improvement value Unimproved

Total value \$117,225.00.

3. This decision, if no appeal is timely filed, shall be certified to the Lincoln County Treasurer, and the Lincoln 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 October 2, 2007.

Signed and Sealed. October 2, 2007.

Wm. R. Wickersham, Commissioner

Nancy J. Salmon, 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.