

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

CLINTON R. SHURIGAR,	)	
	)	
Appellant,	)	Case No 06R-151
	)	
v.	)	DECISION AND ORDER AFFIRMING
	)	THE DECISION OF THE LINCOLN
LINCOLN 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 Clinton R. Shurigar ("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 20, 2007, pursuant to an Order for Hearing and Notice of Hearing issued April 16, 2007. Commissioners Wickersham, Warnes, and Salmon were present. Commissioner Warnes presided at the hearing.

Clinton R. Shurigar, 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 determining actual value of the subject property is unreasonable or arbitrary; and

The 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:

Whether the decision of the County Board determining the equalized taxable value of the subject property is unreasonable or arbitrary;

Whether the equalized taxable value of the subject property was 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; and

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 to which this appeal pertains is described as LAKELAND ESTATES,RPLT,SIXTH,LOT 2 in Lincoln County, Nebraska, ("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:

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Description: LAKELAND ESTATES,RPLT,SIXTH,LOT 2,Lincoln County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 24,405.00	\$	\$ 24,405.00
Improvement	\$268,380.00	\$	\$250,710.00
Total	\$292,785.00	\$225,000.00	\$275,115.00

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 20, 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	\$ 24,405.00
Improvement value	<u>\$250,710.00</u>
Total value	<u>\$275,115.00.</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. “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).
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).



#### **IV. ANALYSIS**

This is an appeal for the tax year 2006 involving the subject property of the Taxpayer. The subject property is an improved residential parcel consisting of a lakeside residential lot, Lot 2, on which has been built a house. Exhibit 2:10 The land component of the subject property, Lot 2, was bought by the Taxpayer along with Lot 1 of Lakeland Estates Sixth Replat for a total purchase price of \$35,000. Exhibit 2:15 and Exhibit 3:4 The Taxpayer built a house on the subject property, Lot 2, starting in 2003 and moved into the house in September of 2004. Exhibit 2:38 The Taxpayer testified that he paid a total of \$220,620.63 to build the house. Exhibit 6 He testified that the only other improvements made to the parcel were a "retaining wall" and the "planting of trees" which cost \$3,500. The Taxpayer contends that the actual value of the subject property is his cost to purchase the land and to build the house, \$225,000. His valuation of just the land component of the subject property was \$13, 250. The Commission notes that the Taxpayer's own testimony would show that the cost to purchase the land, \$13,250, plus the cost to build the house, \$225,000 plus the cost for other improvements of \$3,500, would result in a total cost of \$241,750.

#### **A. ACTUAL VALUATION**

The County used the cost valuation approach to determine the actual value of the subject property, Exhibit 2:13.

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)*

That under professionally accepted mass appraisal methodologies, the Cost Approach includes six steps: “(1) Estimate the land (site) value as if vacant and available for development to its highest and best use; (2) Estimate the total cost new of the improvements as of the appraisal date, including direct costs, indirect costs, and entrepreneurial profit from market analysis; (3) Estimate the total amount of accrued depreciation attributable to physical deterioration, functional obsolescence, and external (economic) obsolescence; (4) Subtract the total amount of accrued depreciation from the total cost new of the primary improvements to arrive at the depreciated cost of improvements; (5) Estimate the total cost new of any accessory improvements and site improvements, then estimate and deduct all accrued depreciation from the total cost new of these improvements; (6) Add site value to the depreciated cost of the primary improvements, accessory improvements, and site improvements, to arrive at a value indication by the cost approach.” *Property Assessment Valuation*, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, pp. 128 - 129.

**B.**  
**COST: NOT EQUAL TO VALUE**

It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value. *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

**C.  
EVIDENCE: OF MARKET VALUE**

A Taxpayer, who offered no evidence that the subject property was valued in excess of its actual value and who only produced evidence that was aimed at discrediting valuation methods utilized by county assessor, failed to meet burden of proving that value of his property was not fairly and proportionately equalized or that valuation placed upon his 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).

**D.  
EQUALIZATION**

The Taxpayer testified that he believed that the subject property was not assessed uniformly and proportionately with two properties on his street, 1102 Tanner Ct and 1107 Tanner Ct. The Taxpayer did not provide the property record cards for the properties to which he referred, but the County did provide the records for one of these properties, 1102 Tanner Ct. A comparison of the subject property to 1102 Tanner Court, one of the properties to which the Taxpayer referred, is shown below.

Subject Property	1109 Tanner Ct.
Exhibit 2:38	Exhibit 2:54
Year Built 2004	2003
Total Area 2620	2290
Quality Good	Avg/Good
Base Cost \$227,580	\$181,000
Add Features \$59,095.	\$26,850

The above comparison is not complete, but demonstrates to the Commission that the two properties are not comparable. Equalization requires that a comparison be made of the ratios of taxable value to actual value for comparable parcels. The Taxpayer did not provide evidence of actual value of 1102 Tanner Ct.

**E.  
VACANT LAND**

The County provided six comparable vacant land sales Exhibit 2:15 to 2:21. The County has tabled the six sales on Exhibit 2:22. A map depicting the vacant land sales used by the County is shown on Exhibit 2:14. The Commission notes that comparable sale # 1, Exhibit 2:15, is the purchase of the subject property plus Lot 1 by the Taxpayer for \$35,000. The Commission notes that the Taxpayer sold off one of the two lots he purchased with the subject property for \$27, 500. Exhibit 2:17

**F.  
SUMMARY**

The Taxpayer did not provide clear and convincing evidence that the County Board of Equalization was arbitrary or unreasonable in determining the assessed valuation property of the subject property and relief 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	\$ 24,405.00
Improvement value	<u>\$250,710.00</u>
Total value	<u><u>\$275,115.00.</u></u>
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 September 19, 2007.

**Signed and Sealed.** September 19, 2007.

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Wm. R. Wickersham, Commissioner

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Nancy J. Salmon, 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.**