

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

JAMES A. WIDTFELDT,	)	
	)	
Appellant,	)	Case Nos 06R-671, 06R-672, and 06R-673
	)	
v.	)	DECISION AND ORDER AFFIRMING
	)	THE DECISIONS OF THE HOLT
HOLT COUNTY BOARD OF	)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,	)	
	)	
Appellee.	)	

The above-captioned cases were called for a hearing on the merits of appeals by James A. Widtfeldt ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Holiday Inn Express, 920 S 20th Street, Norfolk, Nebraska, on September 11, 2007, pursuant to an Order for Hearing and Notice of Hearing issued June 19, 2007. Commissioners Wickersham, Warnes, Salmon, and Hotz were present. Commissioner Wickersham presided at the hearing.

James A. Widtfeldt, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Thomas P. Herzog, County Attorney for Holt County, Nebraska, appeared as legal counsel for the Holt 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 the consolidated cases 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 appeals to maintain them.
2. The parcels of real property to which the above captioned appeals pertain are described in the tables below and are collectively ("the subject property").
3. Actual value of each parcel of the subject property placed on the assessment roll as of January 1, 2006, ("the assessment date") by the Holt County Assessor, value as proposed in timely protests, and actual value as determined by the County Board is shown in the following tables:

Case No. 06R-671

Description: Atkinson VI: O.T. Blk 11 E 25' of W 57' Lots 9-10-11, Atkinson, Holt County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$940.00	\$470.00	\$940.00
Improvement	\$	\$	\$
Total	\$940.00	\$470.00	\$940.00

Case No. 06R-672

Description: Atk VI: Kimball and Blairs Add; Blk 33: N2' Lot 8 Lot 9, Atkinson, Holt County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$2,815.00	\$	\$2,815.00
Improvement	\$500.00	\$	\$500.00
Total	\$3,315.00	\$1,657.50	\$3,315.00

Case No. 06R-673

Description: Atkinson Village; Bitneys Addition, Block 10, Lot 1, Atkinson, Holt County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$4,125.00	\$2,062.50	\$4,125.00
Improvement	\$5,240.00	\$2,620.00	\$5,240.00
Total	\$9,365.00	\$4,682.50	\$9,365.00

4. Appeals of the County Board's decisions were filed with the Commission.
5. The County Board was served with Notices in Lieu of Summons and duly answered those Notices.

6. The appeals were consolidated for hearing by order of the Commission.
7. An Order for Hearing and Notice of Hearing issued on June 19, 2007, set a hearing of the appeals for September 11, 2007, at 8:00 a.m. CDST.
8. 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.
9. Actual value of each parcel for the tax year 2006 is:

Case No.06R-671

Land value	\$940.00
Total value	<u>\$940.00</u>

Case No.06R-672

Land value	\$2,815.00
Improvement	\$ 500.00
Total value	<u>\$3,315.00</u>

Case No.06R-673

Land value	\$4,125.00
Improvement	\$5,240.00
Total value	<u>\$9,365.00.</u>

**III.  
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in each of the above captioned appeals 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 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 (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**

The subject property consists of three parcels as described above. The portion of the subject property described in Appeal 06C-671 is an unimproved commercial parcel. (E4:3). The portion of the subject property described in Appeal 06C-672 is an improved residential parcel. (E5:3). The portion of the subject property described in Appeal 06C-673 is an improved residential parcel. (E6:4).

The Taxpayer testified and argued that a large number of factors affected actual value of the three parcels comprising the subject property. The Taxpayer however produced no evidence of the impact of any factor and offered no evidence on which a determination of actual value could be made for any portion of the subject property. Generalized testimony as presented by the Taxpayer is not clear and convincing evidence.

The Taxpayer did testify that actions taken by the City of Atkinson to prevent public nuisances affect actual value of the subject property. No evidence was produced showing when any nuisance action was undertaken by the City of Atkinson. No evidence was produced



concerning the outcome of any nuisance action brought by the City of Atkinson. The Taxpayer produced no evidence of the impact of efforts by the City of Atkinson to enforce its ordinances concerning the abatement of nuisances on any portion of the subject property.

The Taxpayer argued that the City of Atkinson should be penalized for its efforts to enforce its city ordinance regarding nuisances. The suggested penalty was an exemption, for 10 years, from taxation of the property the City deemed to constitute a nuisance. The Commission has not found any basis for granting that relief.

The Taxpayer has not produced clear and convincing evidence that the decisions of the County Board are unreasonable or arbitrary.

**V.  
CONCLUSIONS OF LAW**

1. The Commission has subject matter jurisdiction in the captioned appeals.
2. The Commission has jurisdiction over the parties to the captioned appeals.
3. The Taxpayer has not adduced sufficient, clear and convincing evidence that the decisions of the County Board are unreasonable or arbitrary and the decisions of the County Board should be affirmed.

**VI.  
ORDER**

**IT IS ORDERED THAT:**

1. The decisions of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2006, are affirmed.

2. Actual value of each parcel of the subject property for the tax year 2006 is:

Case No.06R-671

Land value \$940.00

Total value \$940.00

Case No.06R-672

Land value \$2,815.00

Improvement \$ 500.00

Total value \$3,315.00

Case No.06R-673

Land value \$4,125.00

Improvement \$5,240.00

Total value \$9,365.00.

3. This decision, if no appeal is timely filed, shall be certified to the Holt County Treasurer, and the Holt 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 28, 2007.

**Signed and Sealed.** September 28, 2007.

---

Wm. R. Wickersham, Commissioner

---

Nancy J. Salmon, Commissioner

---

Robert W. Hotz, 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.**