

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

JOE L. DAVIS,)	
)	
Appellant,)	Case No. 07R-298
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE SARPY
SARPY 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 Joe L. Davis ("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 July 31, 2008, pursuant to an Order for Hearing and Notice of Hearing issued May 22, 2008. Commissioners Warnes, Salmon, and Hotz were present. Commissioner Wickersham was excused from participation by the presiding hearing officer. The appeal was heard by a panel of three Commissioners pursuant to 442 Neb. Admin. Code ch.4 §11 (10/07). Commissioner Warnes was the presiding hearing officer.

Joe L. Davis was present at the hearing without legal counsel.

Nicole O'Keefe, a Deputy County Attorney for Sarpy County, Nebraska, was present as legal counsel for the Sarpy 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 taxable value of the subject property as of January 1, 2007, 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, 2007.

**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 LOT 270 TIBURON in Sarpy County, Nebraska, ("the subject property").
3. Actual value of the subject property placed on the assessment roll as of January 1, 2007, ("the assessment date") by the Sarpy 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: LOT 270 TIBURON, Sarpy County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$60,000.00	\$60,000.00	\$60,000.00
Improvement	\$364,406.00	\$307,292.00	\$364,406.00
Total	\$424,406.00	\$367,292.00	\$424,406.00

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 May 22, 2008, set a hearing of the appeal for July 31, 2008, 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 2007 is:

Land value	\$60,000.00
Improvement value	<u>\$364,406.00</u>
Total value	<u>\$424,406.00.</u>

III. APPLICABLE LAW

1. Subject matter jurisdiction of the Commission in this appeal is over all issues that affect actual value. Neb. Rev. Stat. 77-5016 (7) (Cum. Supp. 2006).
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. “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. *City of York v. York County Bd. Of Equalization*, 266 Neb. 297, 64 N.W.2d 445 (2003).
16. 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).

17. The presumption remains until there is competent evidence presented at which point the presumption disappears. From that point forward, the reasonableness of the valuation fixed by the County Board becomes one of fact based on all of the evidence presented. *Garvey Elevators, Inc. v. Adams County Bd. Of Equalization*, 261 Neb. 130, 621 N.W.2d 518 (2001).
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. 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, 580 N.W.2d 561 (1998).
23. 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).
24. 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 is an improved residential lot on which has been built a ranch style house of 2,392 square feet. The house was built in 1999 and is of very good quality and average condition. The Taxpayer does not dispute the land valuation for 2007.

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2007, is not equalized with the taxable value of other real property. The basis for this allegation as shown on the Taxpayer's Form 422, Exhibit 4 page 1, is that "during the past 10 months three

ranch style houses have sold on our street (S. 173 rd Circle) for an average of \$153.55/square foot.

The three parcels referred to by the Taxpayer were Exhibits 4 page 2, Exhibit 4 page 4, and Exhibit 4 page 6. The subject property is shown on Exhibit 6 page 1. The exhibits for the three parcels provided by the Taxpayer are not the complete property record files for the parcels referred to. The Commission finds the property record file for the same parcels in the County's exhibits, Exhibit 18 (same as that parcel referred to in Exhibit 4:2), Exhibit 19 (same as that parcel referred to in Exhibit 4:4), and Exhibit 17 (same as that parcel referred to in Exhibit 4:6). The property record file for the subject property is shown in the County's Exhibit 6 pages 1 to 5. A table itemizing a sampling of the differing attributes of the three parcels is shown below using the County's exhibits.

	Lot 270 (Subject Property) E6:1-5	Lot 267 E18:1-3	Lot 274 E19:1-3	Lot 265 E17:1-3	Lots 269 A&B E16:1-3
Style of House	Ranch	Ranch	Ranch	1 ½ Story	Ranch
Year Built	1999	1994	1997	2000	1999
Quality	50	45	45	45	45
Living Area	2,392	2,095	2,073	2,710	2,373
Basement Part Fin	1,890	1,500	1,024	1,735	1,050
Date of Sale		12/11/06	7/18/06	6/14/07	
Sale Price		\$364,000	\$327,500	\$375,000	
Assessed Valuation 2007	\$424,406	\$333,780	\$319,483	\$391,439	\$369,153

A partial list of the differences can be seen from the table above between the subject property and the three properties used by the Taxpayer for comparison. The Commission finds that the three parcels alleged by the Taxpayer to be comparable to the subject property have significant differences and are not comparable without adjustments for said differences. As an example of the differences, the Commission notes that the subject property has superior quality and a larger portion of the basement that has partition finishing. The Taxpayer has not provided any evidence of adjustments to the actual value of the comparisons to the subject property.

To be comparable properties must share common attributes. “Comparable properties” share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 98.

When using “comparables” to determine value, similarities and differences between the subject property and the comparables must be recognized. *Property Assessment Valuation*, 2nd Ed., 1996, p.103. Most adjustments are for physical characteristics. *Property Assessment Valuation*, 2nd Ed., 1996, p.105. “Financing terms, market conditions, location, and physical characteristics are items that must be considered when making adjustments . . .” *Property Assessment Valuation*, 2nd Ed., 1996, p. 98.

The Taxpayer testified that he had not analyzed the alleged comparable properties and he had not made any adjustments for the differences between the alleged comparable properties to the subject property. Such an analysis is critical to a comparison of the alleged comparable properties to the subject property.

During the appeal hearing the Taxpayer testified that he did not have an opinion of value for the subject property for 2007; however, on Exhibit 4 page 1 the Taxpayer states a requested valuation of \$367,292 for the subject property.

“Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that no one part is compelled to pay a disproportionate share of the tax. Where it is impossible to secure both the standards of the true value of a property for taxation and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. However, the burden is on the taxpayer to show by clear and convincing evidence that the valuation placed upon the taxpayer's property when compared with valuation placed on other similar property is grossly excessive.” *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).

An essential element in support of an equalization issue is that a comparison be able to be made between the ratio of the assessed valuation of the subject property to its actual value and similarly, a comparison be made to the assessed values to actual values of the alleged comparable parcels. Without evidence of actual value of the subject property such a ratio comparison cannot be made.

The Taxpayer argues that while he does not believe that the assessed valuation of his property by the County for 2007 is correct, he attempts to prove this by using the assessed valuations of other properties similarly assessed by the County. Stated another way, the Taxpayer contends that the actual or fair market value of the subject property should be determined based on the taxable or “assessed” value per square foot of other parcels.

A Taxpayer wishing to use taxable “assessed” values to prove actual or fair market value must show that the approach used is a professionally approved mass or fee appraisal approach and demonstrate application of the approach. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes. Neb. Rev. Stat. §77-112 (Reissue 2003). The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods. *Id.* Comparison of assessed values is not identified in the Nebraska Statutes as an accepted approach for a determination of actual value for purposes of mass appraisal. *Id.* Because the method is not identified in statute, proof of its professional acceptance as an appraisal approach would have to be produced. *Id.* No evidence has been presented to the Commission that comparison of assessed values is a professionally accepted mass or fee appraisal approach.

The Taxpayer in this case asks the Commission to presume that the taxable “assessed” value of each offered comparable is equal to its actual value. A presumption can arise that an assessor properly determined taxable “assessed” value. *Woods v. Lincoln Gas and Electric Co.*, 74 Neb. 526, 527 (1905), *Brown v. Douglas County*, 98 Neb. 299, 303 (1915), *Gamboni v. County of Otoe*, 159 Neb. 417, 431, 67 N.W.2d 489, 499 (1954), *Ahern v. Board of*

Equalization, 160 Neb. 709, 711, 71 N.W.2d 307, 309 (1955). A presumption can also arise that a County Board's determination of taxable "assessed" value is correct. *Constructor's Inc. v. Cass Cty. Bd. of Equal.*, 258 Neb. 866, 606 N.W.2d 786 (2000). A presumption is not, however, evidence of correctness in and of itself. See, *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987).

The weight of authority is that assessed value is not in and of itself direct evidence of actual value. See, *Lienemann v. City of Omaha*, 191 Neb. 442, 215 N.W.2d 893 (1974). If however the "taxable 'assessed' value comparison approach" was shown to be a professionally accepted approach for determination of actual value, and that the taxable "assessed value of the proposed comparables was equal to actual value, further analysis would be required. Techniques for use of the approach would have to be developed. Techniques used in the sales comparison approach are instructive. In the sales comparison approach, a sale price is an indication of actual value for a sold property but must be adjusted to account for differences between properties to become an indicator of actual value for another property. *The Appraisal of Real Estate*, Twelfth Edition, Appraisal Institute, Chs 17, 18, 19, (2001). An analysis of differences and adjustments to the taxable "assessed" value of comparison properties would be necessary to obtain an indication of actual value for a subject property. See, *DeBruce Grain v. Otoe County Board of Equalization*, 7 Neb.App. 688, 584 N.W.2d 837 (1998). No adjustments or analysis of adjustments necessary to compensate for differences between the subject property and the taxable "assessed" values of other parcels was presented.

The Commission finds that the Taxpayer has not provided competent evidence to meet his burden to rebut the presumption that the County Board faithfully performed its duties or had sufficient competent evidence to justify its decision. Moreover, the Commission has reviewed all of the evidence presented and finds that the Taxpayer has not shown by the reasonableness of the evidence a different taxable valuation and has not proven by clear and convincing evidence that the County Board's decision was arbitrary or unreasonable. 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 competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination.
4. 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, 2007, is affirmed.

2. Actual value of the subject property for the tax year 2007 is:

Land value	\$60,000.00
Improvement value	<u>\$364,406.00</u>
Total value	<u>\$424,406.00.</u>

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

7. This order is effective for purposes of appeal on August 27, 2008.

Signed and Sealed. August 27, 2008.

Nancy J. Salmon, 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.