

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

ROBERT F. MORAN, JR.,	)	
	)	
Appellant,	)	Case No. 07C-224
	)	
v.	)	DECISION AND ORDER
	)	AFFIRMING THE DECISION OF
DOUGLAS COUNTY BOARD OF	)	THE DOUGLAS COUNTY BOARD OF
EQUALIZATION,	)	EQUALIZATION
	)	
Appellee.	)	

The above-captioned case was called for a hearing on the merits of an appeal by Robert F. Moran, Jr. ("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 August 26, 2008, pursuant to an Order for Hearing and Notice of Hearing issued June 18, 2008. Commissioners Warnes, Salmon, and Hotz were present. Commissioner Warnes was the presiding hearing officer. Commissioner Wickersham was excused from participation by the presiding hearing officer. A panel of three commissioners was created pursuant to 442 Neb. Admin. Code, ch. 4, §011 (10/07).

Robert F. Moran, Jr. 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, was present 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 to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-

5018 (Cum. Supp. 2006). 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, 2007, 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, 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 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 ("the Subject Property") is described in the table below.
3. Actual value of the subject property placed on the assessment roll as of January 1, 2007, ("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:

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Description: BEGGS & WYANT LOT 2 BLOCK 0 IRREG, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$446,800.00	\$448,327.00	\$446,800.00
Improvement	\$1,703,800.00	\$871,794.00	\$1,192,600.00
Total	\$2,150,600.00	\$1,320,121.00	\$1,639,400.00

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 June 18, 2008 set a hearing of the appeal for August 26, 2008, at 1:00 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 2007 is:

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Land value	\$446,800.00
Improvement value	<u>\$1,192,600.00</u>
Total value	<u>\$1,639,400.00.</u>

**III.  
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in this appeal is over all questions necessary to determine taxable value. Neb. Rev. Stat. §77-5016(7) (Supp. 2007).
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. “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).

5. 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).
6. 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).
7. “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.
8. 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).
9. 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).
10. 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).

11. 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).
12. 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).
13. 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).
14. 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).
15. 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).
16. The presumption disappears if there is competent evidence to the contrary. *Id.*
  17. The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2006).
  18. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence. See, 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, 580 N.W.2d 561 (1998).
24. A Taxpayer, who only produced evidence that was aimed at discrediting valuation methods utilized by the 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. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. Cf. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981); *Arenson v. Cedar County*, 212 Neb. 62, 321 N.W.2d 427 (1982) (determination of equalized values); and *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value).

#### **IV. ANALYSIS**

The subject property is a commercial parcel with a one-story 23,232 square foot building built in 1985. (E18:2). The parcel consists of 74,473 square feet of land. (E18:2). The subject property had sold on December 14, 2002 for \$2,150,000 and again on November 30, 2007 for \$2,900,000. (E18:3). The Taxpayer did put into dispute both valuation and equalization in his protest to the County as shown on Exhibit 3 page one. The Taxpayer's testimony at the time of this appeal hearing did not put into dispute the valuation of the subject property, but he did



allege that the taxable value of the subject property as of January 1, 2007, is not equalized with the taxable value of other real property.

The Taxpayer alleges that eight parcels he has listed on Exhibit 5 page one are comparable to the subject property and their assessed evaluation per square foot evidences that they are not equalized with the subject property. The Taxpayer testified that his calculations in support of his equalization claim are shown on Exhibit 3 page one. In summary, the Taxpayer testified that he used the eight alleged comparable parcels to determine an average value per square foot for both the land and also the improvements. These averaged valuations were \$6.02 per square foot for the land and \$37.74 per square foot for the improvements. (E5:1) These averages of valuation per square foot were multiplied times the area of land and the building as shown below. (E3:1)

Land, 74,473 square feet x \$6.02 per square feet = \$448,327.

Improvements, 23,100 square feet x \$37.74 per square feet = \$871,794.

Total = \$1,320,121.

A first critical element of the comparison made by the Taxpayer is that the parcels alleged to be comparable to the subject property must in fact be comparable. The Commissions finds from its review of the parcels shown on Exhibit 5 page one, that they are not directly comparable without adjustments.

“Comparing assessed values of other properties with the subject property to determine actual value has the same inherent weakness as comparing sales of other properties with the subject property. The properties must be truly comparable.” *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998).

“Comparable properties” share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation, 2<sup>nd</sup> 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, 2<sup>nd</sup> Ed.*, 1996, p.103. Most adjustments are for physical characteristics. *Property Assessment Valuation, 2<sup>nd</sup> Ed.*, 1996, p.105. “Financing terms, market conditions, location, and physical characteristics are items that must be considered when making adjustments . . .” *Property Assessment Valuation, 2<sup>nd</sup> Ed.*, 1996, p. 98.

The Commission’s review of the Taxpayer’s alleged comparable parcels on Exhibit 5 page 1 are tabled below.

	Subject	Comp #1	Comp #2	Comp #3	Comp #4	Comp #5	Comp #6	Comp #7	Comp #8
Exhibit	6:1	7:1	8:1	9:1	10:1	11:1	12:1	13:1	14:1
Year Built	1985	1969	1971	1982	1986	1974	1972	1967	1989
Size - Square Feet	23,232	9,000	14,766	18,370	16,240	23,200	31,501	22,556	41,980
Quality	Good	Average	Average	Good	Average	Average	Average	Average	Good
Condition	Average	Average	Average	Average	Average	Average	Average	Average	Average
Total \$	1,639,400	499,886	763,020	2,046,276	2,761,202	1,718,126	2,040,460	1,670,434	3,026,653

The Commission notes from the above table that the subject property was built in 1985, has good quality and is 23,232 square feet in size. The alleged comparable parcels vary in these three variables. The Taxpayer has not made any adjustments for these differences.

The one parcel that the Taxpayer alleged in his testimony which is most comparable to the subject property is that parcel shown in Exhibit 11. While the size of the two parcels are comparable, the quality and age differ substantially and the Commission finds that these two parcels are not comparable without adjustments.

A second critical element of the Taxpayer's analysis is his use of averages to evidence lack of equalization. The use of averages is not a professionally accepted method of reconciling valuations.

A third element of the Taxpayer's analysis is his use of the assessment of other parcels to evidence the actual value of the subject property or the alleged comparable parcels. The Taxpayer did not provide evidence of actual values nor did he provide evidence of the sales of the alleged comparable properties. The Commission does not have the ability to compare the ratio of the assessed valuation to the actual valuation. The Commission does not find evidence of a lack of uniformity in the determination of assessed valuations of the subject property or the alleged comparable parcels.

The Commission finds that the Taxpayer has not rebutted the presumption that the County Board of Equalization faithfully performed its duties and had sufficient competent evidence for its decision both as to its decision as to valuation and equalization. Despite this fact, the Commission has reviewed all of the evidence presented and further finds that the Taxpayer has not shown by clear and convincing evidence that the County Board's decision was either arbitrary or unreasonable nor has he shown by the reasonableness of the evidence a new valuation or that the subject property was not equalized with the taxable value of other real property. 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 produced competent evidence that the County Board failed to faithfully perform its official duties and to act on sufficient competent evidence to justify its actions.
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 actual value of the subject property as of the assessment date, January 1, 2007, is affirmed.
2. Actual value, for the tax year 2007, of the subject property is:

Case No. 07C-224

Land value	\$ 446,800.00
Improvement value	<u>\$1,192,600.00</u>
Total value	<u>\$1,639,400.00.</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 2007.
7. This order is effective for purposes of appeal on December 4, 2008.

Signed and Sealed. December 4, 2008.

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Nancy J. Salmon, Commissioner

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Robert W. Hotz, Commissioner

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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.**