

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

GOSAN, INC. a Nebraska Corporation d/b/a ) SUPER BOWL, ) ) Appellant, ) ) v. ) ) HALL COUNTY BOARD OF ) EQUALIZATION, ) ) Appellee. )	)	Case No 06C-001  DECISION AND ORDER REVERSING THE DECISION OF THE HALL COUNTY BOARD OF EQUALIZATION
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The above-captioned case was called for a hearing on the merits of an appeal by Gosan, Inc., a Nebraska Corporation, d/b/a Super Bowl ("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 November 28, 2007, pursuant to an Order for Hearing and Notice of Hearing issued August 22, 2007. 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. The appeal was heard by a panel of three commissioners pursuant to 442 Neb. Admin. Code ch.4 §11 (10/07).

George J. Overfield, President of the Taxpayer, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Michelle J. Oldham, a Deputy County Attorney for Hall County, Nebraska, appeared as legal counsel for the Hall 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.

**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 Hall County Assessor, value as proposed in a timely

protest, and actual value as determined by the County Board is shown in the following table:

Description: SUPER BOWL SUB LT 1, Hall County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$198,228.00	\$145,000.00	\$198,228.00
Improvement	\$367,097.00	\$232,700.00	\$241,743.00
Total	\$565,365.00 Error Noted - Should be \$565,325.00	\$377,700.00	\$439,971.00

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 August 22, 2007, set a hearing of the appeal for November 28, 2007, at 9:00 a.m. CST.
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	\$198,228.00
Improvement value	<u>\$241,743.00</u>
Total value	<u>\$439,971.00.</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 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. *City of York v. York County Bd. Of Equalization*, 266 Neb. 297, 64 N.W.2d 445 (2003).
9. 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).
10. The presumption remains until competent evidence to the contrary is 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).
11. The Commission cannot grant relief unless the evidence shows that the action of the County Board was unreasonable or arbitrary. See, Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2006).
  12. Proof that the action of the County Board was arbitrary or unreasonable 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).
  13. "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).
  14. 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).
  15. 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).
  16. 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).

17. 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).
18. A Taxpayer fails to meet the 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 when only evidence is produced that was aimed at discrediting valuation methods utilized by county assessor;. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).
19. 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 Taxpayer appeals the assessed valuation of the subject property for 2006. The subject property is a 19.49 acre parcel of land on which the primary improvement is a 35,112 square foot 32-lane bowling center.

The primary improvement contains a 32-lane bowling center, a lounge, a large snack bar and vending area. Exhibit 3:3. In addition, the improvements include a large outdoor recreation area which includes a go-kart track, 18 hole miniature golf course, bumper boats and multiple children's amusement rides. Exhibit 3:3.

The county appraiser set the value of the subject property at \$565,325, for tax year 2006

E1:1) The record before the Commission indicates however, that the County Board relied on the opinion of value of a real estate appraiser hired to coordinate the referee process before the County Board ("the County's Appraiser"). The County's Appraiser testified that his determination of value was derived by taking a value from the Taxpayer's appraisal. The choice by the County's Appraiser, to utilize a value from the Taxpayer's Appraisal, removed from consideration any prior mass appraisal valuation. The Commission notes that the County's Appraiser did not inspect the subject property nor did he do an independent fee appraisal in determining his opinion of value for the subject property.

The Standard of review as stated in statutes has been consistently interpreted to create a presumption that the decision, action, order, or determination appealed from is correct. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W. 2d 821 (2002 and *City of York v. York County Bd. of Equalization*, 266 Neb. 297, 664 N.W.2d 445 (2003). The presumption disappears if there is competent evidence to the contrary presented. *Omaha Country Club, Supra and Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W.3d 518 (2001). The Supreme Court has held that the presumption disappears if it is shown that the assessor/appraiser failed to inspect the improvements as part of the valuation process. *C.A. Bamboni v. County of Otoe*, 159 Neb. 417, 67 N.W.2d 489 (1954). The Commission finds that the Taxpayer has provided competent evidence to rebut the presumption of the County's correctness.

The Taxpayer, having rebutted the presumption that the County's valuation was correct by competent evidence, must still adduce evidence that the Board's decision was unreasonable

or arbitrary. *City of York v. York County Bd. of Equalization, Supra*. This burden is not met by a showing of a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed on the property when compared with valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization, Supra*.

The Taxpayer provided an appraisal as evidence of market value of the subject property as of January 1, 2006 ("Taxpayer's Appraisal"). Exhibit 3:2 to 3:35. The Commission notes with concern that the Taxpayer's Appraisal was not received in total in that only 33 pages of the appraisal's 76 pages were offered. The 33 pages of the Taxpayer's Appraisal were offered and received without objection. The Taxpayer's Appraiser testified that he had prepared the appraisal using professionally accepted methods including inspecting the subject property and valuing it using all three valuation approaches. Further, the County's appraiser testified that he approved of the accuracy of the Taxpayer's Appraisal and that it was consistent with professional appraisal practices.

The Taxpayer's Appraiser performed all three valuation approaches - cost, sales comparison, and income capitalization. Exhibits 3:2 to 3:35. 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)*. The Commission finds that it is an approved professional appraisal practice for an appraiser to reconcile the valuation approaches in an appraisal. "In the valuation process, more than one approach to value is usually applied, and each approach typically results

in a different indication of value. If two or more approaches are used, the appraiser must reconcile at least two value indications.” *The Appraisal of Real Estate*, 12<sup>th</sup> Edition, Appraisal Institute, 2001 p. 597. “ Resolving the differences among various value indications is called reconciliation.” Id. p. 597. The need to reconcile is a mandatory requirement for a competent and professionally accepted appraisal and the resulting appraisal value obtained. The reconciled valuation of the market value of the subject property on December 1, 2005, was \$460,000. However, the Taxpayer’s appraisal recites that the reconciled value includes the “value of all equipment utilized in the operation of the enterprise.” Exhibit 3:4.

The parties stipulated that the personal property located on the subject property as of January 1, 2006, and which is referred to in the Taxpayer’s appraisal, are those items shown on Exhibit 8. Exhibit 8 was prepared by an appraisal company to satisfy the requirements of a bankruptcy court to identify personal property of the subject property. The parties did not stipulate to the value of the personal property as shown on Exhibit 8, however, the evidence is clear that both parties used Exhibit 8 and the valuation shown on the exhibit of \$82,344 for deducting for the value of personal property.

The Commission finds that certain items listed as personal property on Exhibit 8 were in fact real property, i.e. the walk in coolers valued on Exhibit 8 as item 13 in the amount of \$3,500. Exhibit 8:4. Testimony from both parties confirmed the exception noted above regarding the coolers.

The value of the subject property based on the Taxpayer's Appraiser's opinion of value would therefore be \$381,156 which is based on the Taxpayer’s reconciled value of \$460,000

less the opinion of value of the personal property of \$82,344 used by both parties to which is added back the walk in cooler, \$3,500 ( $\$460,000 - \$82,344 + \$3,500 = \$381,156$ ).

The Taxpayer also offered his own opinion of actual value as of January 1, 2006: \$378,000, which is his appraiser's reported valuation of \$460,000, Exhibit 3:4, less the valuation of the personal property rounded to \$82,000, Exhibit 8. The Taxpayer further testified that he met with the County and they agreed to reduce their appraisal of actual value of the subject property to \$439,971 from the noticed valuation of \$565,365. The Taxpayer's final opinion of actual value as of January 1, 2006, is \$357,971, which is based on the County's agreed valuation of \$439,971 less the valuation of personal property from Exhibit 8 in the amount of \$82,000. The Commission puts the greatest weight on the Taxpayers first opinion of value, \$378,000, which value is uninfluenced by the settlement meeting with the County.

The Taxpayer finally provided another document which estimated the valuation of the subject property, Exhibit 3:46 to 3:51. This document was admitted without objection by the County; however, the Commission gives this document little weight. It is not an appraisal, but was rather written for the intended purpose to "assist the owner in achieving a corporate reorganization." The document recites that its author has never seen the subject property and has relied on the Taxpayer for information about the bowling center and the community. Exhibit 3:46.

The valuation approach utilized by the County's Appraiser was to take the cost approach value from the Taxpayer's appraisal (\$522,300) from which he subtracted the total personal property valuation which he obtained from Exhibit 8 (\$82,344) to arrive at an opinion of value of \$439,971 ( $522300.00 - 82,344 = \$439,971$ ). As discussed earlier \$3,500 would

have to be added back into the County Appraiser's opinion of value to account for the walk in coolers, making his opinion of value \$443,471 ( $\$439,971 + \$3,500 = \$443,471$ ). The County's Appraiser offered no explanation of why he chose not to use the reconciled valuation or either of the other two valuation approaches, sales comparison or income approach, contained in the Taxpayer's Appraisal but instead started with the highest valuation figure contained in the Taxpayer's appraisal. This action is at odds with the testimony by the County's Appraiser that he approved of the accuracy of the Taxpayer's Appraisal and its consistency with professional standards. The County's Appraiser offered no evidence or testimony of any attempt to reconcile the three valuation determinations found in the Taxpayer's Appraisal which would indicate that the sales comparison approach and income approach should not have any impact on his opinion of value. The County's Appraiser did not offer any testimony as to why the cost approach as a methodology was a better approach to valuation on the subject property than either of the other two valuation methodologies.

The Commission, based on the record before it, gives great weight to the opinion of value of the Taxpayer's Appraiser since all of the evidence received validated the Taxpayer's Appraisal as accurate and consistent with professional appraisal practices. The Commission finds that the County Board, by adopting the opinion of value of the County's Appraiser, arrived at without inspecting the property and without any analysis of the appraisal work on which the opinion was based, acted unreasonably and arbitrarily.

The Commission finds that the actual value of the subject property on January 1, 2006, is \$381,156 which is based on the Taxpayer's appraisal of \$460,000 less the opinion of value of the personal property of \$82,344 used by both parties to which is added back the walk in

cooler, \$3,500 (\$460,000 - \$82,344 + \$3,500 = \$381,156). The Commission finds that the County Board was unreasonable or arbitrary in their decision and the Taxpayer has met his burden by clear and convincing evidence for relief as ordered.

**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 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 vacated and reversed.

**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 vacated and reversed.
2. Actual value of the subject property for the tax year 2006 is:

Land value	\$198,228.00
Improvement value	<u>\$182,928.00</u>
Total value	<u><u>\$381,156.00.</u></u>
3. This decision, if no appeal is timely filed, shall be certified to the Hall County Treasurer, and the Hall 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 February 8, 2008.

**Signed and Sealed.** February 8, 2008.

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Nancy J. Salmon, 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.**

Commissioner Hotz, dissenting.

I respectfully dissent. In this appeal both the Taxpayer and board of equalization relied upon a fee appraisal (the appraisal) that was commissioned by the Taxpayer with an effective date of December 1, 2005. (E3:2 to E3:35). In the appraisal, the cost approach, sales comparison approach, and income approach were all utilized. In each approach, the land value was estimated to be \$145,000. (E3:18). There was an estimate of equipment value, including bowling lanes, of \$82,300. (E3:21). The lanes “were classified and valued as equipment and were not a component included in any of the analysis, estimates and conclusions that I prepared for the real estate,” (E3:19), however, in each value indication, \$82,300 for equipment was included in the total.

In the appraisal, the estimated value using the cost approach was \$522,300 (including land and equipment). (E3:19 to E3:21). The value indication using the sales comparison approach was \$475,000 (including land and equipment) (E3:22 to E3:31). The use of the income approach resulted in an indication of value of \$440,000 (also including land and equipment) (E3:32 to E3:33). As a result, the appraisal concluded, “Based on the all the (sic) information, data and analysis contained herein, and careful consideration of all three approaches to value, with primary reliance on the Sales Comparison Approach, and valuable support by the Income Approach, it is my opinion that market value of the real estate, furniture, fixtures and equipment associated with the Fee Simple Estate of the subject property, as of December 1, 2005, is estimated to be; ... **\$460,000.**” (emphasis in original) (E3:35).

The county assessor valued the property as of January 1, 2006 at \$565,325 (\$198,228 for land; \$367,097 for buildings) (E1:1 and E3:38). The Taxpayer filed a protest on June 29, 2006, relying upon the appraisal, requesting \$145,000 for land, and \$232,700 for building; for a total of \$377,700. (E1:1). This value could also be expressed by \$460,000 minus \$82,300.

Initially, the Referee Coordinator essentially agreed with the Taxpayer’s request in the “Referees Report,” with a recommendation, dated July 6, 2006. (E3:38). This was denoted as “Coordinator’s Estimated Property Value Recommendations,” and the amount stated was \$460,845. (E3:38). This value was expressed as \$198,228 for land plus \$262,617 for improvements (E3:38). The Coordinator checked a box that noted, “**Appraisal:** Owner has provided appraisal that substantially differs from the Assessor’s value.” (emphasis in original) (E3:41). However, the Coordinator also prepared, and signed on “7/06,” a “Board of Equalization Review Form” in relation to the hearing on July 13, 2006. (E3:44). On this form,

the Coordinator made a “Revised Recommended Total Property Value” of \$439, 971. This was expressed as “460, 845” as the “Original Coordinator Value Estimate,” “(20,874)” as “Change,” and “439,971” as the “Final Coordinator Value Estimate.” The Coordinator testified that this recommendation of value was based upon \$522,300 minus \$82,300, which is the appraisal value indication using the cost approach (with an unexplained difference of \$271.00). The board of equalization followed this value recommendation when it determined the “Total Land and Buildings” value to be \$439,971. (E1:1). This was expressed as \$198,228 for land, and \$241,743 for buildings. (E1:1).

The majority finds as arbitrary or unreasonable that the board of equalization determined the actual value of the subject property as \$439,971, noting that in making his recommendation to the board the Referee Coordinator used “only the cost approach to valuation and not the reconciled valuation or either of the other two valuation approaches...” The majority gives “great weight to the opinion of value of the Taxpayer’s Appraiser,” and reaches a result that has as its starting point the reconciled value as determined by the appraiser ( $\$460,000 - \$82,344 + \$3,500 = \$381,156$ ). The majority emphasizes appraisal standards which require the appraiser to reconcile multiple value indications when more than one approach to value is used. An appraiser’s final opinion of value is “the range of values or single dollar figure derived from the reconciliation of value indications and stated in the appraisal report.” *The Appraisal of Real Estate, 12<sup>th</sup> Edition*, Appraisal Institute, 2001, p. 597. The value indications in the appraisal range from \$440,000 to \$522,300, minus \$82,300 from each, or \$357,700 to \$440,000. Therefore, when the Coordinator recommended a value of \$439,971, it was a value between the

low and high value indications of the appraisal. The majority finds the board of equalization's decision to adopt this recommendation as "unreasonable or arbitrary."

It is the function of the county board of equalization to determine the actual value of locally assessed property for tax purposes. *AT&T Info. Sys. v. State Bd. of Equal.*, 237 Neb. 591 (1991). "Actual value of real property ... 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. Section 77-112*. This section "requires use of applicable statutory factors, individually or in combination, to determine the actual value of real estate for tax purposes." *Cabela's, Inc. v. Cheyenne Cty. Bd. of Equal.*, 597 N.W.2d 623, 8 Neb.App. 582 (1998). But, "nothing in the statute requires the county assessor or the county board of equalization to use all of the factors set forth therein." *Affiliated Foods Coop., Inc. v. County of Madison*, 229 Neb. 605 (1988). Section 77-112 "does not require use of all of the specified factors." *First Nat'l Bank & Trust of Syracuse v. Otoe County*, 233 Neb. 412 (1989). These prior decisions regarding the meaning of "actual value" in Section 77-112 have consistently construed the law to not require the use of all of the statutory factors, whatever they have been.

There is a presumption that the board of equalization has faithfully performed its official duties and has acted upon sufficient competent evidence to justify its actions. *City of York v. York Cty. Bd. Of Equal.*, 266 Neb. 297, 64 N.W.2d 445 (2003). That presumption remains until there is competent evidence to the contrary presented. *Garvey Elevators, Inc. v. Adams Cty. Bd. of Equal.*, 261 Neb. 130, 621 N.W.2d 518 (2001).

The standard of review for appeals to the Tax Equalization & Review Commission requires the appellant to prove that the decision, order, action, or determination appealed from was unreasonable or arbitrary. Neb. Rev. Stat. Section 77-5016(8). Proof that the action of the county board was arbitrary or unreasonable must be made by clear and convincing evidence. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171 (2002). 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). 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). 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).

Even if the Taxpayer has met the burden to rebut the initial presumption in favor of the county board of equalization by sufficient competent evidence, I find that the Taxpayer has not met its burden to prove by clear and convincing evidence that the board of equalization's decision was arbitrary or unreasonable. The board of equalization's decision was not arbitrary. It was not made in disregard of the facts and circumstances. Rather, the decision was based upon the value recommendation from the Referee Coordinator (a value which fell between the value indications determined by the appraisal). The board of equalization's decision was also not unreasonable, having as its basis the value recommendation from the Referee Coordinator, a value which, again, fell between the value indications as determined by the appraisal. I further

find that the board of equalization's decision was neither arbitrary nor unreasonable in that it was authorized by Neb. Rev. Stat. Sec. 77-112.

The Taxpayer has failed to establish by clear and convincing evidence that the Board's decision was arbitrary or unreasonable. I would, therefore, affirm the decision of the Hall County Board of Equalization.

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Robert W. Hotz, Commissioner