

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

DARRELL J. LOGEMANN, ET AL,	)	
	)	
Appellant,	)	Case No. 07C-026
	)	
v.	)	DECISION AND ORDER AFFIRMING
	)	THE DECISION OF THE DOUGLAS
DOUGLAS 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 Darrell J. Logemann, et al ("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 March 19, 2008, pursuant to an Order for Hearing and Notice of Hearing issued January 2, 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.

Darrell J. Logemann was present at the hearing without legal counsel.

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.

## **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 LANDS SEC-TWN-RGE 10-16-11 EX IRREG S 13.26 AC-IRREG, Douglas 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 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:

Case No. 07C-026

Description: LANDS SEC-TWN-RGE 10-16-11 EX IRREG S 13.26 AC-IRREG, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$189,600.00	\$1,895,597.00	\$189,600.00
Improvement	\$1,000,800.00	\$637,424.00	\$1,000,800.00
Total	\$1,190,400.00	\$827,021.00	\$1,190,400.00

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. The Taxpayer was served with a Notice in Lieu of Summons and duly answered that Notice.
7. An Order for Hearing and Notice of Hearing issued on January 2, 2008, set a hearing of the appeal for March 19, 2008, at 9:00 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 the subject property as of the assessment date for the tax year 2007 is:

Land value	\$189,600.00
Improvement value	<u>\$1,000,800.00</u>
Total value	<u>\$1,190,400.00.</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. 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 disappears if there is competent evidence to the contrary. *Id.*
11. The Commission can grant relief only if the action of the County Board was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2006).
12. Proof that the action of the County Board 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).

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. "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).
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, 580 N.W.2d 561 (1998).
18. 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).
19. 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. FACTS**

The subject property is a 26.61 acre commercial parcel on which five (5) mini warehouses have been built over the period of 2002 to 2004. (E9:4). The parcel also has a single family residence built in 1900. (E 9:11). Two cell towers are located on the subject property, but they are centrally assessed and their valuation is not a part of this appeal. The Taxpayer testified that he is not disputing the valuation assessed for the land of the subject property. His appeal disputes only the valuation assessed for the improvements with the County assessing the improvements at \$1,000,800, Exhibit 10:1, and the Taxpayer alleging the actual value of the improvements on the subject property at \$637,4245, Exhibit 11:1, for a total valuation of land and improvements of \$827,021.

The Taxpayer testified that he is a licensed Real Estate Broker in the states of Nebraska and Iowa and had held a Nebraska Appraiser's license until just recently. He testified that the physical attributes of the subject property are correctly listed on the property record cards as shown on Exhibits 9:4 to Exhibit 9:11. His testimony was that the residence was in disrepair and is only worth a salvage value of \$5,000. The photographs of the residence are Exhibits 11:8 and 11:9.

The Taxpayer testified he had two reasons to allege that the actual value of the subject property is less than that which was assessed for 2007. First, he alleges that he built the improvements on the subject property for less than the County's assessed taxable value. Secondly, he alleges that his actual income and expenses should be used to calculate the actual value of the subject property instead of market rents and expenses.

The Taxpayer testified that the five (5) existing improvements on the subject property identified as "mini warehouses," were built for \$ 11 to \$13 per square foot, and were added to the subject property prior to January 1, 2007. His testimony was that the mini warehouse improvements should be valued at their cost to build. Exhibit 2:1 is the Taxpayer's listing of the five buildings with the assessed taxable value from the County. Exhibit 6:1 is the Taxpayer's proposed method of calculating the actual value of the subject property. The Taxpayer further testified that he was in the process of having a new storage warehouse built and the cost to build it new was \$15.55 per square foot, which is less than the County's assessment of \$18.15 to \$19.60. (E 3:1). and (E 2:1).

The Taxpayer further testified that he had provided his actual income and expenses to the referee and alleged an actual value for the improvements of \$617,900 as shown on Exhibit 2:3.

## **V. ANALYSIS**

### **A. Cost Approach to Valuation**

The Taxpayer alleges that the actual value of the improvements on the subject property is his cost to build the improvements.

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 (Rev. Stat. 2003).*

“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).

The Commission takes into account the sale price of a property as one indicia of its value, but it is not the sole or determinative factor in deciding a property’s actual or market value.

“Market value is the most probable price, expressed in terms of money, that a property would bring if exposed for sale in the open market in an arm’s-length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used.” *Property Assessment Valuation*, International Association of Assessing Officers, Second Edition 1996, p.35-36.

The County determined the actual value of the subject property by using both the cost and income valuation approaches to valuation. Exhibit 9:51. The County’s cost approach to valuation is shown on Exhibits 9:19 to 9:25 and is in the amount of \$1,190,386.

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; (5) 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.

The County’s Exhibits 9:19 to 9:25 verify that the County followed this valuation approach. The Taxpayer’s exhibit 6:1 and testimony he provided verified that he did not follow correct valuation methods for using the cost approach to value the subject property.

**B.**  
**Income Approach to Valuation**

A second approach used by the Taxpayer to value the subject property was the income approach as shown on Exhibit 2:3. The income approach is one of the accepted valuation methods listed in Neb. Rev. Stat. Section 77-112.

The Income Approach can be defined as “a set of procedures through which an appraiser derives a value indication for an income-producing property by converting its anticipated benefits (cash flows and reversion) into property value. This conversion can be accomplished in two

ways. One year's income expectancy can be capitalized at a market-derived rate or at a capitalization rate that reflects a specified income pattern, return on investment, and change in the value of the investment. Alternatively, the annual cash flows for the holding period and the reversion can be discounted at a specified yield rate." *The Dictionary of Real Estate Appraisal*, Fourth Edition, Appraisal Institute, p.143, (2002). The steps required for use of the income approach with direct capitalization may be summarized as (1) estimate potential gross income; (2) deduct estimated vacancy and collection loss to determine effective gross income; (3) deduct estimated expenses to determine net operating income; (4) divide net operating income by an estimated capitalization rate to yield indicated value. *The Appraisal of Real Estate* 12<sup>th</sup> Edition, The Appraisal Institute, 2001, pp. 493 - 494. A variety of techniques may be used to quantify various components of any application of the approach. *Supra*, at chs 20-24, (2001).

Three major methods are used to develop an indication of value using the income approach: direct capitalization; yield capitalization; and a discounted cash flow analysis. *Id.* The direct capitalization method produces an indication of value based on a single year's estimated income. *Supra*, at 529. A yield capitalization method requires an analysis of income and expected returns over multiple years. *Supra*, at 549. Discounted cash flow analysis is a refinement of the yield capitalization method in which a reversionary value is added to the indicated value of the income stream. *Supra*, at 569. A reversionary value is added on the assumption that the asset producing an income stream still exists and has value at the end of the period. *Id.* That value is discounted to present value as of the valuation date and added to the value of the income stream. *Supra*, at ch 24.

That under professionally accepted mass appraisal methods, “the income and expenses that are proper and acceptable for income tax purposes are not the same as those that are appropriate for the income approach. Only the reasonable and typical expenses necessary to support and maintain the income-producing capacity of the property should be allowed.”

*Property Assessment Valuation*, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, p. 204.

Under the Income Approach, the higher the capitalization rate, the lower of final indicated value. *Property Assessment Valuation*, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, p. 232. A “loaded” capitalization rate includes the effective tax rate. *Property Assessment Valuation*, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, p. 233.

The County provided their exhibits to a valuation determination of the subject property using the income approach. Exhibits 9:48 to 9:50. The Commission finds that the County has utilized proper professional techniques for valuing the subject property using the income approach and has valued the subject property at \$1,191,773. Exhibit 9:50.

The Commission finds that the Taxpayer’s testimony and Exhibit 2:3 verifies that actual expenses and income were utilized by the Taxpayer which are not in accordance with proper professional accepted techniques for valuing the subject property using the income approach.

The Commission further finds that the Taxpayer has not rebutted the presumption that the County Board failed to faithfully perform their duties or acted without sufficient competent evidence. *City of York v York County Bd of Equalization*, 266 Neb. 297, 665 N.W. 2d 445 (2003) and *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W. 2d, 518 (2001). Moreover, the Commission has examined all of the evidence presented

and finds that the Taxpayer has not proven by clear and convincing evidence that the County Board was arbitrary or unreasonable in their decision, nor has he proven by the reasonableness of the evidence a different valuation for the subject property. The appeal of the Taxpayer is denied.

**VI.  
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 rebutted the presumption that the County Board failed to faithfully perform its duties or acted without sufficient competent evidence.

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.

**VII.  
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:

Land value	\$ 189,600.00
Improvement value	<u>\$1,000,800.00</u>
Total value	<u>\$1,190,400.00.</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 May 22, 2008.

**Signed and Sealed.** May 22, 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.**