



The Commission took statutory notice, received exhibits and heard testimony.

The Presiding Hearing Officer advised the Taxpayer that an “Offer to Confess Judgement” had been filed by the County and explained the provisions Neb. Rev. Stat. §77-1510.01 (Cum. Supp. 2004) to the Taxpayer.

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.

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2006, 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, 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 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 06R-455

Description: RALSTON ADD LOT 34 BLOCK 5 ALL LTS 33 & 34 BLK 5 IRREG, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 19,400.00	Included in Total	\$ 19,400.00
Improvement	\$87,700.00	Included in Total	\$87,700.00
Total	\$107,100.00	\$98,700.00	\$107,100.00

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 November 15, 2007. The hearing on February 6, 2008 was recessed and resumed on August 11, 2008, as provided in an order issued June 10, 2008.
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. The hearing was held before a panel of the Commission. 442 Neb. Admin. Code, ch 4 §11.01 (10/07).

9.

9. Actual value of the subject property as of the assessment date for the tax year 2006 is:

Land value	\$ 19,400.00
Improvement value	<u>\$ 70,474.00</u>
Total value	<u>\$ 89,874.00</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 one 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. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
16. The presumption that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action remains until competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
17. 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).

18. 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),
19. 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).
20. "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).
21. 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).
22. 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).
23. "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).
24. 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).



25. 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).
26. 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 parcel on which a house was built in 1915. (E2:2). The Taxpayer testified that he does not dispute the valuation of the land at \$19,400. The Taxpayer disputes the valuation of the improvements to the subject property and expressly disputes the size of the living and basement area of the house.

The County's first Assessor Report is dated June 12, 2006 and is shown in Exhibit 5. Page 9 of Exhibit 5 shows the finished living area of the subject property as 1,624 square feet. The report also showed 1,056 square feet of basement. (E5:9). The County's Assessor Report dated June 12, 2006 determined that the actual value of the subject property was \$107,140. (E5:7).

The Taxpayer testified that he protested actual value based on his belief of differences in sizes of finished living area and basement and other issues as shown on his mailed-in protest form, Exhibit 5 page 16.

Exhibit 2 page 4 shows that an Appraiser for the County Assessor inspected the subject property on September 17, 2007, after the County Board's determination of actual value had been made. That inspection resulted in several corrections. A new Assessor's Report was prepared dated January 23, 2008. (E2). This new Assessor's Report, shows that the Appraiser for the County Assessor believed that the residential area of the subject property was 1,298 square feet. (E2:6). The County Board's determination of actual value was based on a residential area of 1624 square feet. (E5:9).

The unfinished basement area of the subject property as determined by the Appraiser for the County Assessor was 594 square feet. (E2:6). The County Board's determination of actual value was based on an unfinished basement of 1056 square feet. (E5:9).

The Appraiser for the County Assessor testified that the County Board had determined actual value of the subject property relying on a methodology that assigned value to various characteristics of an improved parcel. The methodology would for example determine a value per square foot of residential area and a value per square foot of unfinished basement. The testimony of the appraiser for the County Assessor was that it was reasonable that if the number of units of residential area or unfinished basement were reduced for an improvement on a parcel that there would be a reduction in the indicated actual value.

Despite a reduction in the finished living area from 1,628 square feet to 1,298 square feet of the subject property, and a reduction in the basement area from 1,056 square feet to 594

square feet, the assessor's value as of January 1, 2006 was unchanged. (E2:1 and E5:6) The Appraiser for the County Assessor testified that it was not logical or reasonable in his professional opinion for actual value to remain the same despite the significant reductions in size of residential area and undiminished basement for the subject property.

The Commission had recessed this matter during the first day of hearing, February 6, 2008, to allow the County to provide additional property record file information showing the contribution to value calculated for the unfinished basement and residential area. This information was not part of the County's evidence as shown by the blank screen shot shown as Exhibit 5 page 10. No new information was provided to the Commission between the initial hearing of February 6 and its completion on August 11, 2008, as requested by the Commission's Order of February 7, 2008 and required by the original Order for Hearing dated November 15, 2007. Both Orders require submission of "... all documents, including attachments, submitted to the Douglas County Board of Equalization as a protest or other basis for initiation of deliberations which lead to the decision, order, determination, or action of the Douglas County Board of Equalization from which the appeal in this case is taken;" (Case File, TERC Order of November 15, 2007, Item 14, Required Evidence).

The Commission's Supplemental Order of February 7, 2008, recited the requirements of Neb. Rev. Stat. §77-1502 (4) which describes the documents required to be prepared by the County Clerk or County Assessor as part of any protest. One part of this documentation required to be prepared under this statute is a statement "...describing the basis upon which the board's decision was made. The report shall have attached to it a copy of that portion of the property record file which substantiates calculation of the protested value unless the county

assessor certifies to the county board of equalization that a copy is maintained in either electronic or paper form in his or her office”. Neb. Rev. Stat. §77-1502(4) (Cum. Supp. 2006).

The Appraiser for the County Assessor testified that he had not made the initial calculation of valuation for the assessed valuation of the subject property and he was not aware of any calculation substantiating the County Board’s determination.

The Taxpayer did not offer an opinion of actual value.

The Commission finds that the County Boards determination of actual value is unreasonable or arbitrary as it was based on materially different characteristics than those that in fact existed for the subject property on January 1, 2006.

The Commission can now consider whether the evidence supports a different determination of actual value. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W.2d 518 (2001).

The County provided evidence of sales of parcels comparable to the subject property based on its characteristics as found after inspection. (E2:6). The Commission finds that the most comparable parcel to the subject property provided by the County is comparable #1 shown on Exhibit 2 page 6. The improvements on that parcel are newer (1948) than the residence on the subject property (1915), comparable #1 contains 38 square feet more of residential area and does not have an unfinished basement. (E2:6). Comparable #1 has a detached garage that is 44 square feet larger than the attached garage on the subject property. (E2:6). Comparable #1 is of average quality as opposed to fair quality of the subject property. (E2:6). Comparable # 1 sold on June 30, 2003 for \$92,500. (E2:6). The value per square foot derived from that sale is \$69.24 per square foot of residential area. (E2:6). Comparable #1 has a assessed value of

value of \$71.51 per square foot. (E2:6). While it would be desirable to make the precise adjustments to a determination of actual value that would result from a reapplication of the valuation methodology relied on by the County Board, that is apparently not possible because the County has failed to comply with the requirements of section 77-1502 of Nebraska Statutes. The best indicator of actual value of the subject property is the sale price of Comparable #1 in June of 2003. The subject property has 1,298 square feet of residential area which results in actual value for the subject property, based on the sale of Comparable #1, of \$89,874 ( $\$69.24$  per square foot of residential area x 1,298 square feet of residential area = \$89,873.52).

The Commission finds that the Taxpayer has met his burden of rebutting the presumption that the County Board faithfully performed its duties and had sufficient competent evidence for its determination. In addition, the Commission finds that the Taxpayer has proven by clear and convincing evidence that the County Board was unreasonable and arbitrary in its determination of assessed value of the subject property. The Commission's findings are based on the acknowledged adjustments to the size of the living and basement areas of the subject property determined by the Appraiser for the County Assessor and supported by the testimony of the Taxpayer. The Commission has reviewed all of the evidence and finds from the reasonableness of it that relief should be granted to the Taxpayer. The Commission finds that the assessed valuation of the subject property for the year 2006 is in the amount of \$89,874.

**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 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 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 affirmed.
2. Actual value of the subject property for the tax year 2006 is:

Land value	\$ 19,400.00
Improvement value	<u>\$ 70,474.00</u>
Total value	<u>\$ 89,874.00</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 2006.
7. This order is effective for purposes of appeal on October 2, 2008.

**Signed and Sealed.** October 2, 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.**

I concur in the result.

The Commission is an administrative agency of state government. See, *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000). As an administrative agency of state government the Commission has only the powers and authority granted to it by statute. *Id.* The Commission is authorized by statute to review appeals from decisions of a county board of equalization, the Tax Commissioner, and the Department of Motor Vehicles. Neb. Rev. Stat. §77-5007 (Supp. 2007). In general the Commission may only grant relief on appeal if it is shown that the order, decision, determination, or action appealed from was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(8) (Supp. 2007).

Nebraska courts have held that the provisions of section 77-5016(8) of the Nebraska Statutes create a presumption that the County Board has faithfully performed its official duties

and has acted upon sufficient competent evidence to justify its actions. *City of York v. York County Board of Equalization*, 266 Neb. 297, 664 N.W.2d 445 (2003). The presumption cited in *York* has roots in the early jurisprudence of Nebraska. See, *State v. Savage*, 65 Neb. 714, 91 N.W. 716 (1902) (citing *Dixon Co. v. Halstead*, 23 Neb. 697, 37 N.W. 621 (1888) and *State v. County Board of Dodge Co.* 20 Neb. 595, 31 N.W. 117 (1887)). As early as 1903 Nebraska Statutes provided for review of County Board assessment decisions by the district courts. Laws 1903, c. 73 §124. The statute providing for review did not state a standard for that review. *Id.*

In 1959 the legislature provided a statutory standard for review by the district courts of county board of equalization, assessment decisions. 1959 Neb Laws, LB 55, §3. The statutory standard of review required the district Court to affirm the decision of the county board of equalization unless the decision was arbitrary or unreasonable or the value as established was too low. *Id.* The statutory standard of review was codified in section 77-1511 of the Nebraska Statutes. Neb. Rev. Stat. §77-1511 (Cum. Supp. 1959). Review of district court decisions made pursuant to section 77-1511 was de novo. *Future Motels, Inc. v. Custer County Board of Equalization*, 252 Neb. 565, 563 N.W.2d 785 (1997). The presumption functioned as a standard of review. See, e.g. *Gamboni v. County of Otoe*, 159 Neb. 417, 67 N.W.2d 492 (1954).

The Tax Equalization and Review Commission was created in 1995. 1995 Neb. Laws, LB 490 §153. Section 77-1511 of the Nebraska Statutes was made applicable to review of county board of equalization assessment decisions by the Commission. *Id.* In 2001 section 77-1511 of Nebraska Statutes was repealed. 2001 Neb. Laws, LB 465, §12. After repeal of section 77-1511 the standard for review to be applied by the Commission in most appeals was stated in section 77-5016 of the Nebraska Statutes. Section 77-5016 requires a finding that the decision



being reviewed was unreasonable or arbitrary. The basis for that determination is the evidence presented to the Commission in a new record. See, Neb. Rev. Stat. §77-5016 (Cum. Supp. 2006). Commission decisions are reviewed for error on the record. See, Neb. Rev. Stat. 77-5019(5) (Cum. Supp. 2006). The statutory basis for Commission review and the review of its decisions is analogous to district courts review of decisions made by administrative agencies. The basis for district court review of decisions made by administrative agencies is de novo on the record. *Tyson Fresh Meats v. State*, 270 Neb. 535, 704 N.W.2d 788 (2005). The decisions of the district court examining the administrative decision are reviewed for error on the record. *Thorson v. Nebraska Dept. of Health & Human Servs.*, 274 Neb. 322, 740 N.W.2d 27 (2007). The similarities are enough to suggest that the framework for review applied to district court decisions could be made applicable to decisions of the Commission.

Many appeals of decisions made pursuant to section 77-1511 were decided without reference to the statutory standard of review applicable to the district courts. See, e.g. *Grainger Brothers Company v. County Board of Equalization of the County of Lancaster*, 180 Neb. 571, 144 N.W.2d 161 (1966). As noted however review was de novo and the reviewing court was not bound by the standard of review imposed on district court. *Loskill v. Board of Equalization of Adams County*, 186 Neb. 707, 185 N.W.2d 852 (1971). In *Hastings Building Co., v. Board of Equalization of Adams County*, 190 Neb. 63, 206 N.W.2d 338 (1973), the Nebraska Supreme Court acknowledged that two standards of review existed for the district courts; one statutory, and the other judicial stated as a presumption that the county board of equalization faithfully performed its official duties and acted upon sufficient competent evidence. No attempt was

made by the *Hastings* Court to reconcile the two standards of review that were applicable to the district courts.

The possible results from application of the presumption and the statutory standard of review by the Commission are: (1) the presumption is not overcome and the statutory standard is not overcome; (2) the presumption is overcome and the statutory standard is not overcome; (3) the presumption is not overcome and the statutory standard is overcome; (4) and finally the presumption is overcome and the statutory standard is overcome. The first possibility does not allow a grant of relief, neither standard of review has been met. If the presumption is overcome the statutory standard remains. See, *City of York v. York County Bd of Equal.*, 266 Neb. 297, 664 N.W.2d 445 (2003). The second possibility does not therefore allow a grant of relief even though the presumption is overcome. The third possibility requires analysis. The presumption and the statutory standard of review are different legal standards, one remaining after the other has been met. See. *City of York v. York County Bd of Equal.*, 266 Neb. 297, 664 N.W.2d 445 (2003). The burden of proof to overcome the presumption is competent evidence. *City of York*, Supra. Clear and convincing evidence is required to show that a county board of equalization's decision was unreasonable or arbitrary. See, e.g. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002). Competent evidence that the county board of equalization failed to perform its duties or act upon sufficient competent evidence is not always evidence that the county board of equalization acted unreasonably or arbitrarily because the statutory standard of review remains even if the presumption is overcome. *City of York*, Supra. Clear and convincing evidence that a county board of equalization's determination, action, order, or decision was unreasonable or arbitrary, as those terms have been defined, may however

overcome the presumption that the county board of equalization faithfully discharged its duties and acted on sufficient competent evidence. In any event the statutory standard has been met and relief may be granted. Both standards of review are met in the fourth possibility and relief may be granted. Each analyses of the standards of review allowing a grant of relief requires a finding that the statutory standard has been met.

Use of the presumption as a standard of review has been criticized. See, G. Michael Fenner, *About Presumptions in Civil Cases*, 17 *Creighton L. Rev.* 307 (1984). In the view of that author the presumption should be returned to its roots as a burden of proof. *Id.* Nebraska's Supreme Court acknowledged the difficulty of using two standards of review and classified the presumption in favor of the county board of equalization 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. See, *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987). Use of the *Gordman* analysis allows consideration of both the presumption and the statutory standard of review without the possible conflict or difficulties inherent in the application of two standards of review. The *Gordman* analysis requires the Commission to consider all of the evidence produced in order to determine whether there is clear and convincing evidence that the decision, action, order, or determination being reviewed was unreasonable or arbitrary. It is within that framework that I have analyzed the evidence.

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Wm R. Wickersham, Commissioner