

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

EDWIN C. SHAFFER, TRUSTEE, EDWIN )		
C. SHAFFER & MARIE SHAFFER )		
CODUIT T.A. DATED 1-8-1992, )		Case No. 08R 137
Appellant, )		
v. )		DECISION AND ORDER
DOUGLAS COUNTY BOARD OF )		REVERSING THE DECISION OF
EQUALIZATION, )		THE DOUGLAS COUNTY BOARD OF
Appellee. )		EQUALIZATION

The above-captioned case was called for a hearing on the merits of an appeal by Edwin C. Shaffer, Trustee, Edwin C. Shaffer & Marie Shaffer Coduit T.A. Dated 1-8-1992 ("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 October 20, 2009, pursuant to an Order for Hearing and Notice of Hearing issued August 20, 2009. Commissioners Warnes and Hotz were present. Commissioner Warnes was the presiding hearing officer. Commissioner Wickersham was excused from participation by the presiding hearing officer. Commissioner Salmon was absent. The appeal was heard by a quorum of a panel of the Commission.

Edwin C. Shaffer, Trustee of Edwin C. Shaffer & Marie Shaffer Coduit T.A. Dated 1-8-1992, 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. 2008). 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, 2008, 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, 2008.

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2008, 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, 2008.

**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, 2008, ("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: LEAWOOD WEST LOT 22 BLOCK 13 90 x 125, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$28,100.00	\$Included in Total	\$28,100.00
Improvement	\$181,700.00	\$Included in Total	\$181,700.00
Total	\$209,800.00	\$177,000.00	\$209,800.00

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 20, 2009, set a hearing of the appeal for October 20, 2009, at 9:00 a.m. CDST.
7. An Affidavit of Service, which appears in the records of the Commission, establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.
8. Actual value of the subject property as of the assessment date for the tax year 2008 is:

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Land value	\$28,100.00
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Improvement value \$136,595.00

Total value \$164,695.00.

**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) (Cum. Supp. 2008).
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. 2008).
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 is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).
9. The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).
10. Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property. See *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).
11. 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).
12. 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).
  13. 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).
  14. 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).
  15. 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).
  16. 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).
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 presumption disappears if there is competent evidence to the contrary. *Id.*
  19. 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).
  20. Proof that the order, decision, determination, or action appealed from 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).
  21. "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).
  22. 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).
  23. 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).
24. “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).
25. 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).
26. 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).
27. 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 taxable value) *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 residential parcel improved with a two-story house with 2,268



square feet of finished living area, built in 1966. (E7:4). The house is rated as good for both quality and condition. (E7:4). The Taxpayer has asserted that taxable value of the subject property as of January 1, 2008, is not equalized with the taxable value of other real property.

The Taxpayer testified he did not allow an inspection by the County Assessor for purposes of the assessment of the subject property for tax year 2008. However, he testified that the data in the property record file was correct and accurate, with the exception that the house had two working wood-burning fireplaces rather than one, as indicated in the County Assessor's records. (E7:7). The Taxpayer's opinion of value of the subject property, as of January 1, 2008, was \$177,000.

The property record files for the subject property, as well as seven alleged comparable properties, were offered by the Taxpayer and received into evidence. (E5-6). According to these records, all of the properties in Exhibits 5 and 6 were located in Neighborhood 59, with a Neighborhood Extension of 22160. For residential assessments for tax year 2008, Douglas County employed mass appraisal multiple regression analysis. *2008 Reports & Opinions of the Property Tax Administrator for Douglas County*. Multiple regression analysis is "a particular statistical technique, similar to correlation, used to analyze data in order to predict the value of one variable (the dependent variable), such as market value, from the known values of other variables (called "independent variables"), such as lot size, number of rooms, and so on." *Mass Appraisal of Real Property*, International Association of Assessing Officers, 1999, 383. "The purpose of most mass appraisals is to determine market value." *Id.* at 2.

For each of these eight properties, the property record file includes a Market Calculation Detail sheet, which lists the physical characteristics and the values of these physical

characteristics as improvements on the property as indicated by market sales. The Market Calculation Detail sheet for the subject property, as well as each of the seven comparable properties, assigns a Constant of 20000, and a neighborhood factor (NBHD) of 1.02. (E5-6). Each Market Calculation Detail arrives at a Total Market value as the sum of the improvements and the land. Each of the eight property record files also includes a Real Property Values sheet, which indicates the history of the assessment for the property, including the value as determined by the County Assessor (RA), and any action taken by the Board of Equalization (BOE) or this Commission (TRC) if the assessment was protested or appealed. In all cases, the Total Market Value is the sum of all of the values, multiplied by the neighborhood factor, and added to the land value. However, in every case but one, (E5:12-13), the Total Market value on the Market Calculation Detail was the same (rounded) as the Total Value as determined by the County Assessor (RA), as listed on the Real Property Values sheet.

A similar analysis can be done with the property record files submitted by the County Board in Exhibits 7 and 8. Again, in every case but one, (E8:14-15), the Total Market value on the Market Calculation Detail was the same (rounded) as the Total Value as determined by the County Assessor (RA), as listed on the Real Property Values sheet.

What is apparent from this analysis is that the properties identified at Exhibit 5:12-13 and Exhibit 8:14-15 were also protested to the County Board, but, unlike the subject property, both of these properties received a lowered value on their improvements in the County Board's determination. Therefore, the Commission finds that the subject property was valued at market value, while two comparable properties were valued at substantially less than market value.

With exceptions not applicable in this case, “[a]ll real property in this state, ... shall be

subject to taxation, and shall be valued at its actual value.” Neb. Rev. Stat. Section 77-201.

“Actual value, market value, and fair market value mean exactly the same thing.” *Omaha Country Club v. Douglas Cty. Bd. of Equal., et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002). “Equalization is the process of assuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. *Scribante v. Douglas Cty. Bd. Of Equal.*, 8 Neb.App. 25, 588 N.W.2d 190 (1999). 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 Cty. Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623 (1999). When the Douglas County Assessor valued the subject property and the seven comparable properties analyzed above, mass appraisal multiple regression analysis was used to determine the market value of each property. When the County Board subsequently lowered the valuation of improvements on the comparable properties identified at Exhibit 5:12-13 and Exhibit 8:14-15, but did not similarly lower the improvement value of the subject property, the result was that the improvement on the subject property was valued at 100% of market value while the others were valued at substantially less than market value. “If a taxpayer’s property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief.” *Cabela's Inc. v. Cheyenne Cty Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

A board of equalization has a duty “to equalize the disparate valuations of comparable real properties provided that the differences were the result of separate valuation protests.” *Zabawa v. Douglas Cty. Bd. of Equal.*, 17 Neb.App. 221, 757 N.W.2d 522 (2008). “Nebraska law requires that comparable properties be valued similarly and does not provide an exception

merely because both owners exercised their right to contest the valuations. *Id.* The improvement on the property identified at Exhibit 5, pages 12-13, was originally assessed, using multiple regression analysis, at a market value of \$184,451 (E5:12). However, the result of the protest to the County Board was a reduction in the assessed value of the improvement to \$138,700 (E5:13). The Board's action resulted in a 24.834% decrease in the assessed value of the improvement. In other words, as a result of the Board's action, the improvement was valued at 75.176% of its market value according to the County Assessor's multiple regression analysis. Likewise, the improvement on the property identified at Exhibit 8, pages 14-15, was originally assessed, using multiple regression analysis, at a market value of \$271,400 (E8:14). However, the result of the protest to the County Board was a reduction in the assessed value of the improvement to \$215,900 (E8:15). The Board's action resulted in a 20.45% decrease in the assessed value of the improvement. In other words, as a result of the Board's action, the improvement was valued at 79.55% of its market value according to the County Assessor's multiple regression analysis.

“The right of a taxpayer whose property alone is taxed at 100 percent of its true value is to have its assessment reduced to the percentage of that value at which others are taxed.” *Chief Indus. v. Hamilton Cty. Bd. of Equal.*, 228 Neb. 275, 422 N.W.2d 324 (1988). 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 Cty. Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987). In this appeal, the evidence is that the improvements on two comparable properties were valued at a fraction of market value as a result of the action of the Douglas County Board in the protest process. In so doing, the Board of Equalization failed to

perform a plain duty by not equalizing the Taxpayer's property valuation. Thus, we find that the Board of Equalization's valuation of the subject property was unreasonable and arbitrary. The Commission further finds that in order to obtain uniformity and proportionality, the subject property must be valued at the same percentage of its market value as its comparables. Therefore, we find that the improvement on the subject property should be valued at 75.176% of its market value according to the County Assessor's multiple regression analysis as found on Exhibit 5, page 6 ( $\$181,700 \times .75176 = \$136,595$ ). The assessed value of the land, at \$28,100, should remain unchanged. (E5:6). Therefore, the taxable value of the subject property for January 1, 2008, should be \$164,695 ( $\$28,100 + \$136,595$ ).

## **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 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 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 reversed.

## **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, 2008, is reversed.

2. Actual value, for the tax year 2008, of the subject property is:

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Land value \$28,100.00

Improvement value \$136,595.00

Total value \$164,695.00.

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. 2008).

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 2008.

7. This order is effective for purposes of appeal on November 24, 2009.

Signed and Sealed. November 24, 2009.

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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. 2008), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.**