

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

ARDYTH M. ERTZNER,)	
)	
Appellant,)	Case No. 08R 236
)	
v.)	DECISION AND ORDER
)	REVERSING THE DECISION OF
DOUGLAS COUNTY BOARD OF)	THE DOUGLAS COUNTY BOARD OF
EQUALIZATION,)	EQUALIZATION
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Ardyth M. Ertzner ("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 January 21, 2010, pursuant to an Order for Hearing and Notice of Hearing issued November 23, 2009. Commissioners Wickersham and Hotz were present. Commissioner Wickersham was the presiding hearing officer. Commissioner Warnes 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.

Ardyth M. Ertzner 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:

Case No. 08R 236

Description: Lot 101 Block 0 Piedmont Replat, Omaha, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$19,000.00	\$19,000.00	\$19,000.00
Improvement	\$149,600.00	\$110,300.00	\$146,600.00
Total	\$168,600.00	\$129,300.00	\$165,600.00

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 23, 2009, set a hearing of the appeal for January 21, 2010, at 11:00 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 2008 is:

Case No. 08R 236

Land value	\$ 19,000.00
Improvement value	<u>\$139,562.00</u>
Total value	<u><u>\$158,562.00.</u></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) (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 an improved residential parcel. The improvement on the parcel is a 1,619 square foot residence, with a 1,560 square foot basement 700 square feet of which is finished, and a basement garage. (E3:2).

An appraiser employed by the Douglas County Assessor's office inspected the subject property after the County Board made its decision on the Taxpayer's protest. As a result of that inspection that appraiser determined that the condition of the subject property was average rather than good. The change in condition caused a \$10,000 reduction in the estimate of value made by a computer program. The County Board had relied on the computer program's estimate of value with the erroneous condition factor when it made its decision. Correction of the error makes a significant change in the estimate of value produced by the computer program. The County Board's reliance on an estimate of value made on assumptions that when corrected make a significant difference in the estimate of value it relied on is unreasonable or arbitrary.

The task before the Commission after its determination that the decision of the County Board's determination was unreasonable or arbitrary is to review the evidence and to determine actual and equalized taxable value of the subject property as of January 1, 2008.

The Taxpayer testified that in her opinion actual value of the subject property as of January 1, 2008 was \$150,000. The Taxpayer's opinion was in her words a "good guesstimate." The Taxpayer furnished assessment and sales information for several parcels. The physical characteristics, attributes, and amenities of the subject property and the parcels presented by the Taxpayer for comparison, with assessment and sale information, are summarized in the following tables.

Descriptor	Subject	Parcel 1	Parcel 2	Parcel 3
Exhibit	E3:1&2	E8:6-8	E8:11&12	E8:15-17
Location	15460 Dewey Cr	510 Piedmont Dr.	15526 Dewey Cr	15310 Jackson St
Lot Size	9,492 sq ft	8,470 sq ft	14,094 sq ft	9,310 sq ft
Condition	Average ¹	Good	Good	Average
Quality	Average	Good	Average	Average
Yr Built	1979	1979	1979	1978
Exterior Walls	Frame Siding	Frame Siding	Frame Siding	Frame Siding
Style	Split Entry	Tri Level	Split Entry	Tri Level
Area Above Ground	1,619	1,826	1,730	1,794
Roof Cover	Comp Shingle	Comp Shingle	Comp Shingle	Comp Shingle
HVAC	Central Air to Air	Central Air to Air	Central Air to Air	Central Air to Air
Basement	1,560	700	1,586	540
Finished	700			330
Bedrooms	4	3	4	3
Bathrooms	3	2	2.5	3.5
Garage Type	Basement	Built In	Basement	Built In

Descriptor	Subject	Parcel 1	Parcel 2	Parcel 3
Garage Area	Double	484	Triple	456
Misc Imp	Metal Fireplace, Wood Deck, Brick Trim	Metal Fireplace	Metal Fireplace	Metal Fireplace, Brick Trim, open Slab Porch, Slab Roof Ceiling Porch
Lot Value	\$19,000	\$16,900	\$28,200	\$18,600
Imp Value	\$146,600	\$147,600	\$138,700	\$147,700
Taxable Value	\$165,600	\$164,500	\$166,900	\$166,300
Sale Date		11/4/08		8/1/08
Sale Price		\$135,000		\$140,924

Descriptor	Subject	Parcel 4	Parcel 5	Parcel 6
Exhibit	E3:1&2	E8:22-24	E8:25-27	E8:27-29
Location	15460 Dewey Cr	15344 Cuming St	948 S 153 St	15466 Dewey Cr
Lot Size	9,492 sq ft	9,180 sq ft	8,588	9,156
Condition	Average ¹	Average	Good	Average
Quality	Average	Average	Average	Good
Yr Built	1979	1984	1973	1979
Exterior Walls	Frame Siding	Frame Siding	Frame siding	Frame Siding
Style	Split Entry	Split Entry	Split Level	Tri level
Area Above Ground	1,619	1,509	1,376	1,976
Roof Cover	Comp Shingle	Comp Shingle	Comp Shingle	Comp Shingle
HVAC	Central Air to Air	Central Air to Air	Central Air to Air	Central Air to Air
Basement	1,560	1,375	1,248	552
Finished	700	400	350	120

Descriptor	Subject	Parcel 4	Parcel 5	Parcel 6
Bedrooms	4	3	3	4
Bathrooms	3	2.5	2.5	2.5
Garage Type	Basement	Basement	Shown in Photo	Built In
Garage Area	Double	Double	No Data	480
Misc Imp	Metal Fireplace, Wood Deck, Brick Trim	Metal Fireplace, Slab w/Steps Porch, Wood Deck	Masonry Fireplace, Brick Trim, (record incomplete)	Metal Fireplace, Brick Trim, Slab Roof Ceiling Porch
Lot Value	\$19,000	\$25,700	\$17,200	\$18,300
Imp Value	\$146,600	\$119,800	\$124,300	\$140,500
Taxable Value	\$165,600	\$145,500	\$141,500	\$158,800
Sale Date		10/1/08	3/30/07	
Sale Price		\$149,000	\$149,950	

Descriptor	Subject	Parcel 7	Parcel 8	Parcel 9
Exhibit	E3:1&2	E8:30&31	E8:32&33	E8:34&35
Location	15460 Dewey Cr	15472 Dewey Cr	15478 Dewey Cr	15456 Dewey Cr
Lot Size	9,492 sq ft	7950 sq ft	8,500	9,120
Condition	Average ¹	Good	Good	Good
Quality	Average	Good	Good	Good
Yr Built	1979	1979	1979	1978
Exterior Walls	Frame Siding	Frame Siding	Frame Siding	Frame Siding
Style	Split Entry	2 Story	Ranch	2 Story
Area Above Ground	1,619	1,896	1,375	2,125
Roof Cover	Comp Shingle	Comp Shingle	Comp Shingle	Comp Shingle
HVAC	Central Air to Air	Central Air to Air	Central Air to Air	Central Air to Air

Descriptor	Subject	Parcel 7	Parcel 8	Parcel 9
Basement	1,560	792	1,375	1,001
Finished	700			
Bedrooms	4	4	3	4
Bathrooms	3	2.5	2	2
Garage Type	Basement	Built In	Built In (drawing)	Built In
Garage Area	Double	528	data unreadable	483
Misc Imp	Metal Fireplace, Wood Deck, Brick Trim	Masonry Fireplace	Metal Fireplace, (record incomplete)	Masonry Fireplace, Brick Trim, Slab Roof Ceiling Porch
Lot Value	\$19,000	\$15,900	\$17,000	\$18,200
Imp Value	\$146,600	\$130,500	\$124,700	\$142,300
Taxable Value	\$165,600	\$146,400	\$141,700	\$160,500
Sale Date				
Sale Price				

Descriptor	Subject	Parcel 10	Parcel 11	Parcel 12
Exhibit	E3:1&2	E8:36&37	E8:38&39	E8:40&41
Location	15460 Dewey Cr	15452 Dewey Cr	15465 Dewey Cr	505 S 155 St
Lot Size	9,492 sq ft	7,808 sq ft	9,282 sq ft	9,085 sq ft
Condition	Average ¹	Good	Good	Good
Quality	Average	Average	Good	Good
Yr Built	1979	1979	1979	1979
Exterior Walls	Frame Siding	Frame Siding	Frame Siding	Frame Siding
Style	Split Entry	Tri Level	Ranch	2 Story
Area Above Ground	1,619	1,969	1,628	2,496

Descriptor	Subject	Parcel 10	Parcel 11	Parcel 12
Roof Cover	Comp Shingle	Comp Shingle	Comp Shingle	Comp Shingle
HVAC	Central Air to Air	Central Air to Air	Central Air to Air	Central Air to Air
Basement	1,560	500	1,546	1,248
Finished	700			
Bedrooms	4	4	3	4
Bathrooms	3	2.5	2	2.5
Garage Type	Basement	Built In (drawing)	Attached	Basement
Garage Area	Double	data not legible	data not legible	Double
Misc Imp	Metal Fireplace, Wood Deck, Brick Trim	Metal Fireplace	Metal Fireplace, Wood Deck	Metal Fireplace, Wood Deck
Lot Value	\$19,000	\$15,600	\$18,600	\$18,200
Imp Value	\$146,600	\$142,900	\$141,700	\$153,200
Taxable Value	\$165,600	\$158,500	\$160,300	\$171,400
Sale Date		3/31/06		
Sale Price		\$159,900		

1. The condition of the residence as stated in Exhibit 3 is Good. The evidence is that condition of the residence as of January 1, 2008 was good. Condition is stated as average in the table to reflect the evidence.

“Comparable properties” share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation, 2nd Ed.*, International Association of Assessing Officers, 1996, p. 98. When using “comparables” to determine value, similarities and differences between the subject property and the comparables must be recognized. *Property Assessment Valuation, 2nd Ed.*, 1996, p.103.

Some of the parcels for which information was provided had been sold. A determination of value may be made based on sales of similar parcels. In the sales comparison approach an opinion of value is developed by analyzing closed sales, listings, or pending sales of properties that are similar to the subject property. *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute, 2008, pg. 297. An opinion of value based on use of the sales comparison approach requires use of a systematic procedure:

“1. Research the competitive market for information on sales transactions, listings, and offers to purchase or sell involving properties that are similar to the subject property in terms of characteristics such as property type, date of sale, size, physical condition, location, and land use restraints. ...

2. Verify the information by confirming that the data obtained is factually accurate and that the transactions reflect arm’s-length market considerations. ...

3. Select relevant units of comparison (e.g., price per acre, price per square foot, price per front foot) and develop a comparative analysis for each unit. ...

4. Look for differences between the comparable sale properties and the subject property using the elements of comparison. Then adjust the price of each sale to reflect how it differs from the subject property or eliminate that property as a comparable. This step typically involves using the most comparable sale properties and then adjusting for any remaining differences.

5. Reconcile the various value indications produced from the analysis of comparables into a single value indication or a range of values.” *The Appraisal of Real Estate* 13th Edition, The Appraisal Institute, 2008, pgs 301-302.

Parcel 4 is similar to the subject property. The residence on Parcel 4, is a split level style residence in average condition and has a metal fireplace. There are differences between the subject property and the parcel 4 primarily age, condition, the size of the basement and the finish in the subject property's basement. The residence on the subject property was built in 1979. The residence on Parcel 4 was built in 1984. The lot size of the subject property is 9,492 square feet. The lot size of parcel 4 is 1,022 square feet smaller. The residence on the subject property is 110 square feet larger than the residence on Parcel 4. The basement of the subject property is 185 square feet larger than the residence on Parcel 4. The subject property's basement has 700 square feet of finished area while the basement of the residence on Parcel 4 is unfinished. The differences noted do not allow a direct comparison of the subject property and Parcel 4 without adjustment. No adjustments were proposed to recognize the effect on value of the differences noted. The sale of Parcel 4 for \$149,950 in March of 2007, does not support the Taxpayers opinion that actual value of the subject property was \$150,000 as of January 1, 2008.

Sales information is also in evidence for Parcels 1, 3, 5, & 10. The differences between the physical characteristics, attributes and amenities of the subject property and those parcels are greater than those differences between the subject property and Parcel 4. No adjustments were proposed to recognize the effect on value of the differences between the subject property and Parcels 1, 3, 5, & 10. The sale of Parcel 4 which is the most similar of the sold parcels does not support the Taxpayer's opinion of actual value. An analysis of other less similar parcels is unnecessary.

An appraiser employed by the County Assessor ("Appraiser") testified that actual value of the subject property both as determined by the County Board and as recommended at the hearing

on the merits was derived from application of a computer program. The program can be referred to generically as a computer assisted mass appraisal (CAMA) program. The Appraiser testified that development of the database on which the program relies is a multi-step process. The first step is to inventory the physical characteristics and valuation factors of each parcel for which value is to be determined. Page 2 of Exhibit 3 is an example of an inventory. Page 5 of Exhibit 3 shows CENTRAL H & A, BASE FIN, BATHS, SF, FIRE_METAL, GARAGE BASE 2, PORCH WOOD DECK, COND_GD and BASE 8'BLK UNFIN as physical characteristics, and Market Age, Constant, and NBHD as valuation factors, as items which affect value as determined in the model. The next step is to identify sold parcels and place the information concerning the sales in a database with the inventory information. The data for sold parcels is then analyzed to determine how selected physical characteristics or valuation factors found in the inventory affected sales prices. The analytical technique used is known as multiple regression analysis. See, *The Appraisal of Real Estate*, 12th Edition, Appraisal Institute (2001) pp. 684-685. After the database is analyzed and valuation factors are assigned to physical characteristics and valuation factors, the derived values are applied to the physical characteristics and valuation factors found in the inventory of a sold parcel. An example of the resulting calculation is shown in Exhibit 3 at page 5.

The value indicated by the model is then compared to the sale price of each sold parcel. Adjustments to the values indicated by the model must be made to meet valuation standards, they are made by the addition of a constant amount or multiplication of the indicated contribution to value by a neighborhood factor or both. After adjustments to the model have been made, the

values established by the model are applied to unsold parcels to estimate their actual values. See, *Mass Appraisal of Real Property*, International Association of Assessing Officers, ch 4, (1999).

After an indication of value is developed using the model, that value is evaluated against the sales prices of similar parcels as found in the County Assessor's database. An example of the information used in that evaluation is shown in Exhibit 2 at page 7.

The model is obviously dependent on an accurate inventory of physical characteristics and valuation factors for sold and unsold parcels. In this case estimate of value produced by the model and relied on by the County Board was developed on the belief that the condition of the residence was good. After an inspection it was determined that in fact condition of the residence on the subject property was average. The Appraiser testified that changing the condition of the residence from good to average would produce a reduction in value indicated for the subject property by the model used for valuation in 2008 of \$10,000. The Appraiser also testified that the analysis shown on page 6 of Exhibit 3 was based on the model used to estimate values for the year 2009. Changes in the values assigned to various factors make use of the 2009 model for estimates of value in the year 2008 unreasonable. The Appraiser testified that if the estimate of actual value produced by the computer program was reduced by \$10,000 that actual value of the subject property would be estimated using correct information and on the same basis as other similar parcels. The result is an estimate of actual value at \$158,562. When actual value of a parcel is determined using a formula in substantial compliance with the law and which has been uniformly and impartially applied the resulting value is probative evidence of actual value. See, *Greenwood Ranch v. Morrill Cty. Bd. of Equal.*, 232 Neb. 114, 439 N.W.2d 760 (1989); *Lexington Building Co., Inc. v. Board of Equalization*, 186 Neb. 821, 187 N.W.2d 94 (1971).

The Taxpayer's opinion of actual value is unsupported. The Nebraska Supreme Court has observed that "(a)s a general rule the valuation of property for tax purposes by the proper assessing officers should not be overthrown by the testimony of one or more interested witnesses that the values fixed by such officers were excessive or discriminatory when compared with the values placed thereon by such witnesses. Otherwise no assessment could ever be sustained." *Helvey v. Dawson County Board of Equalization*, 242 Neb. 379, 387, 495 N.W.2d 261, 267 (1993). The estimate of value based on the computer program analysis after correction is probative and persuasive. Actual value of the subject property for the tax year 2008 is \$158,562.

The Taxpayer also asserted that the subject property was overvalued in comparison to other similar parcels. 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). 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). The Taxpayer did not present evidence showing that the actual value of any parcel offered for comparison was different than its taxable value.

The Parcel most similar to the subject property as presented by the Taxpayer is Parcel 2. There are however, differences between the subject property and Parcel 2. Parcel 2 is a 14,094 square foot lot versus the 9,492 square feet in the subject property lot. The condition of the residence on the subject property is average versus good condition for the residence on Parcel 2. The residence on Parcel 2 is 111 square feet larger than the residence on the subject property.

The residence on the subject property has 700 square feet of finished space in the basement the residence on Parcel 2 does not have any finished space in the basement. The differences noted do not support a conclusion that their actual values are equal. In fact as the Commission has found actual value of the subject property is less than actual and taxable value of Parcel 2 as shown in the county assessor's records.

The evidence is that the ratio of actual value to taxable value for each of the comparison parcels is 1. There is no evidence that the ratio of taxable value to actual value for the subject property as determined by the Commission is greater than 1. There is no basis for relief on the Taxpayer's equalization claim.

**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 actual value of the subject property as of the assessment date, January 1, 2008, is vacated and reversed.
2. Actual value, for the tax year 2008, of the subject property is:

Case No. 08R 236

Land value \$ 19,000.00

Improvement value \$139,562.00

Total value \$158,562.00.

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 February 8, 2010.

Signed and Sealed. February 8, 2010.

Wm. R. Wickersham, 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.

Commissioner Hotz, dissenting in part and concurring in the result.

I concur with the presiding hearing officer in the reversal of the decision of the county board of equalization in that there is clear and convincing evidence that the decision of the county board of equalization was arbitrary or unreasonable. I write separately to dissent from portions of the presiding officer's order.

First, I would find and conclude there is competent evidence to rebut the presumption that the county 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, 664 N.W.2d 445 (2003). The presiding officer's order makes no such finding or conclusion.

I dissent from the analysis of the presiding officer's order as follows: the tables on pages 10-14, beginning with the first paragraph on page 16 through the last complete paragraph on page 16, and beginning with the second paragraph on page 19 through the end of the analysis on page 20. The critical point that may get lost is that the Taxpayer did not provide any evidence upon which the Commission could rely in order to make adjustments to the alleged comparables offered by the Taxpayer.

Therefore, I concur with the presiding officer in the balance of the order, including the reversal of the decision of the County Board of Equalization, and in the order that actual value of the subject property is \$158,562.

Robert W. Hotz, Commissioner