

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

HERITAGE OF WAUNETA, INC.,)	
)	
Appellant,)	Case No. 09C 152
)	
v.)	DECISION AND ORDER
)	REVERSING THE DECISION OF
CHASE COUNTY BOARD OF)	THE CHASE COUNTY BOARD OF
EQUALIZATION,)	EQUALIZATION
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Heritage of Wauneta, Inc. ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Holiday Inn Express, 300 Holiday Frontage Road, North Platte, Nebraska, on October 6, 2010, pursuant to an Order for Hearing and Notice of Hearing issued July 26, 2010. Commissioner Salmon was excused. Commissioner Hotz was present. The appeal was heard by a quorum of a panel of the Commission.

Todd D. Vetter, Assistant Secretary of Heritage of Wauneta, Inc., was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Arlan G. Wine, County Attorney for Chase County, Nebraska, was present as Legal Counsel for the Chase 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 (Reissue 2009). 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, 2009, 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, 2009.

**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, 2009, ("the assessment date") by the Chase 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: PT N1/2SW1/4 11-5-36, WAUNETA (410' X 150' + 1.05 +285.1 X 20' + 5702 SQ, Chase County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$17,398.00	\$17,398.00	\$17,398.00
Improvement	\$1,112,602.00	\$307,602.00	\$1,112,602.00
Total	\$1,130,000.00	\$325,000.00	\$1,130,000.00

4. An appeal of the County Board's decision was filed with the Commission.
5. An Order for Hearing and Notice of Hearing issued on July 26, 2010, set a hearing of the appeal for October 6, 2010, at 10:00 a.m. CDST.
6. 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.
7. Actual value of the subject property as of the assessment date for the tax year 2009 is:

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Land value \$17,398.00

Improvement value \$512,602.00

Total value \$530,000.00.

**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) (Reissue 2009).
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 2009).

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 2009).
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 2009).
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) (Reissue 2009).
7. 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).

8. 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).
9. The presumption disappears if there is competent evidence to the contrary. *Id.*
10. 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) (Reissue 2009).
11. 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).
12. "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).
13. 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).
14. 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).

15. A corporate officer or other representative of an entity, must be shown to be familiar with the property in question and have a knowledge of values generally in the vicinity to be qualified to offer an opinion of value. *Kohl's Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb.App. 809, 638 N.W.2d 881 (2002).
16. 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).
17. 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).
18. 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. *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 commercial parcel with a 112,940 square foot tract of land with a class-C, 18,595 square foot building. (E2:34). The building is one story and is used as a 38-bed, skilled nursing facility. (E3:4). It was built in 1969. (E3:3).

The Taxpayer has asserted that actual value of the subject property as of January 1, 2009, is less than actual value as determined by the County Board.

The Commission notes that Neb. Rev. Stat. §77-112 (1) (Reissue of 2009), states that “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.” Both parties have provided determinations of actual value using all three methods of valuation.

From the evidence before the Commission, the Commission notes that the Taxpayer has had two appraisals of the subject property. (E2:3 to 25 and E3). The Taxpayer chose to introduce for evidence only one of these two appraisals, that appraisal by Huron Consulting Services LLC (Huron), appraiser John W. Van Santen, dated September 2, 2010. (Exhibit 3). This Taxpayer’s appraiser is a certified general real estate appraiser. (E3:126). He testified that one of his principal areas of expertise is the valuation of healthcare facilities. Because he was told by the Taxpayer that the facility would be required by law to have an approved sprinkler system installed by December, 2012, at a cost of \$300,000, he deducted that amount from each of his value conclusions. The value determined by his appraisal using the cost approach was \$530,000 less a reduction of \$300,000 for the sprinkler system, for a valuation of \$230,000. (E3:3, E3:67, E3:106). This same appraisal valued the subject property at \$530,000 using the income approach, with the reduction of \$300,000 for the sprinkler system resulting in a valuation of \$230,000, and \$420,000 using the sales comparison approach, less \$300,000 for the sprinkler system, for a value of \$120,000. (E3:5, E3:39, E3:106).

The Commission notes that a second appraisal prepared for the Taxpayer was provided by the County from Property Valuation Services, which valued the subject property using the sales approach at \$250,000. (E2:47). That same appraisal valued the subject property at \$270,000 using the income approach, and \$260,000 using the cost approach. (E2:47).

The two appraisals are from different appraisers. At this appeal hearing, only the appraisal by Huron Consulting Services (Huron) was offered by the Taxpayer. (E3). The Commission acknowledges that the Taxpayer chose to give the greatest weight to the Huron appraisal.

The appraiser for the County Assessor valued the subject property using the three approaches to value as \$1,130,000 using the income approach, \$1,082,688 using the cost approach, and \$1,130,000 using the sales comparison approach. (E2:34 and E2:83).

The following table shows the results of the two appraisals by the Taxpayer and the third appraisal by the appraiser for the County Assessor.

	Sales	Income	Cost	Reconciled
Taxpayer				
*PVS	\$250,000.00	\$270,000.00	\$260,000.00	\$260,000.00
*Huron	\$120,000.00	\$230,000.00	\$230,000.00	\$230,000.00
County				
	\$1,130,000.00	\$1,130,000.00	\$1,082,688.00	\$1,130,000.00

*PVS=Property Valuation Services

*\$300,000 has been subtracted from each of the valuation approaches due to alleged need for sprinkler system

Both of the parties agreed that the highest and best use of the subject property was its current use as a skilled nursing facility. This belief by the Taxpayer is shown in Exhibit 3, page

39. The appraiser for the County Assessor used the income approach to value and specifically used the income for the subject property as provided to it by the Taxpayer. (E2:27).

The appraiser for the Taxpayer testified that there were several functional deficiencies of the subject property which reduces its actual value for use as a skilled nursing facility. These functional deficiencies are shown on Exhibit 3, page 36. The appraiser for the Taxpayer testified that the subject property is obsolete in a sense because of new requirements of the State of Nebraska for similar nursing facilities such as larger rooms, non compliant ADA bathrooms, long and narrowed hallways, number of bathtubs per shower room, and lack of an approved sprinkler system.

COST APPROACH

The Taxpayer's appraiser testified that the subject property was a "special purpose" property and it did not have an alternative use. It was his opinion that the cost approach was the best appraisal method to use to value the property. His opinion was based on not only the special purpose of the building, but the need to separate the income stream of the ongoing business from the total income generated by the property if using the income approach, and the need to exclude the business value if using the sales comparison approach. The appraiser testified that the County Board did not distinguish and separate the value of the business income stream from the total income generated by the property when using the income approach nor the value of the business in using the sales comparison approach. In addition, the appraiser testified that the depreciation used by the County Board in the cost approach was not appropriate. The

Commission finds that based on this evidence the Taxpayer has rebutted the presumption in favor of the County Board.

The details for his cost approach to value are shown in his appraisal report. (E3:63-67). Using the cost approach, the subject property was valued at \$530,000 before reduction for an uninstalled sprinkler system. (E3:66 & 67). The appraiser for the Taxpayer also valued the property using the income and market approaches.

The cost approach appraisal of the Taxpayer includes the value of the “real estate” which includes the land, buildings, and site improvements. (E3:2). The County also valued the subject property using the cost approach, and its value using this approach was \$1,082,688. (E2:34)

The parties differ substantially on the Total Replacement Cost New (TRCN) and the depreciation used as shown:

County (E2:34)

TRCN	\$1,668,461
Physical and Functional Depreciation	\$336,849
Economic Depreciation (20%)	\$266,322
Total RCN Less Depreciation	\$1,065,290

Taxpayer (E3:66-67)

Adjusted RCN of Building Improvements	\$2,282,920
Adjusted RCN of Site Improvements	\$38,192
TRCN	\$2,321,112
Less Physical Depreciation on Building (77.8%)	\$1,775,605
Less Depreciation of Site Improvements (80%)	\$30,554
Total RCN Less Depreciation	\$514,954

The difference in the RCN between the parties is without explanation. Both appraisers agreed the Marshall & Swift useful life of the skilled nursing facility was 45 years, however, the appraiser for the Taxpayer used 77.8% physical depreciation for the building improvements and 80% depreciation for the site improvements, while the appraiser for the County used 20% for the physical depreciation and an additional 20% for economic depreciation. (E3:66 and E2:34). On Exhibit 3, page 65 the appraiser for the Taxpayer showed the method of determining the accrued depreciation which he used. The appraiser for the County Assessor testified that his opinion of depreciation came from market sales in the County. The Commission finds the explanation given by the County's appraiser regarding depreciation is unpersuasive. The Commission finds the explanation given for the depreciation used by the appraiser for the Taxpayer to be both reasonable and understandable in light of the evidence and gives the greater weight to the depreciation used by the appraiser for the Taxpayer.

Each party valued the land component at approximately \$17,000; the County at \$17,398 and the Taxpayer at \$17,000. The total value determined by the parties using the cost approach is as shown below.

	County	Taxpayer
RCN less Depreciation	\$1,065,290	\$514,954
Land	\$17,398	\$17,000
Total Cost Value	\$1,118,241	\$530,000 (rounded)

INCOME APPROACH

The Commission notes that the County used the income approach to value the subject property. (E2:34). No attempt was made by the appraiser for the County Assessor to separate the income stream of the ongoing business for this approach or to take into account the business value of the subject skilled nursing facility when using the sales comparison approach. Nor was there a distinction and separation of the income stream of the sales of the nursing homes used in the County's sales comparison approach to value. The Commission finds that the failure of the County Board of Equalization to separate out from its determination of the actual value of the subject property the business income stream was arbitrary and unreasonable.

COST APPROACH FAVORED BY COMMISSION

The Commission finds that the greatest weight should be given to the cost method to value the subject property since the business income stream and business value is not part of the actual value. The Commission further finds that the greatest weight should be given to the appraisal of the Taxpayer's appraiser which excludes the business value of the nursing home when using the cost approach and excludes the business income when using the income method to value. (E3:63-67).

SPRINKLER SYSTEM

The appraiser for the Taxpayer (Huron) alleges that the subject property is deficient because an approved sprinkler system must be installed by December 2012 at a cost of \$300,000 or the facility will be shut down. (E3:36).

The definition of actual value in Neb. Rev. Stat. 77- 112 does include language that equates actual value to “... 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 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 consideration of the full description of the physical characteristics of the real property and an identification of the property rights being valued.”

The appraiser for the Taxpayer testified that his source of the cost to add a new sprinkler system was from the Taxpayer and he had not determined independently the cost for such improvement.

Testimony of the Taxpayer placed the cost to add a new sprinkler system to the subject property at “\$215,000 to \$220,000.” The Commission notes the differences in cost to add a sprinkler system provided by the County Board and the Taxpayer. There was no evidence of the exact requirements to upgrade the facility for State approval or a proposal for the costs associated with such an upgrade. . The Commission finds that no reduction in the value of the subject property should be made for the addition of a new sprinkler system because there is not competent evidence of its description or its cost.

TAXABLE VALUE 2009 - SUMMARY

The Commission gives the greatest weight to the Cost approach to value the subject property. Further, the Commission gives the greatest weight to the appraisal of the Taxpayer

which determined actual value of the subject property for 2009 at \$530,000 using the cost approach. The Commission finds that there is not sufficient competent evidence of the cost to add a new sprinkler system.

The Commission finds that the Taxpayer has provided competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination.

The Commission finds that the Taxpayer has provided clear and convincing evidence that the County Board's decision was arbitrary or unreasonable. Relief is granted to the Taxpayer to the extent that the actual value of the subject property for 2009 is \$530,000.

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, 2009, is reversed.
2. Actual value, for the tax year 2009, of the subject property is:

Case No. 09C 152

Land value \$17,398.00

Improvement value \$512,602.00

Total value \$530,000.00.

3. This decision, if no appeal is timely filed, shall be certified to the Chase County Treasurer, and the Chase County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2009).
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 2009.
7. This order is effective for purposes of appeal on November 24, 2010.

Signed and Sealed. November 24, 2010.

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 (REISSUE 2009), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.