

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

GERALD P. MAGUIRE,	)	
	)	
Appellant,	)	Case No. 08R 411
	)	
v.	)	DECISION AND ORDER
	)	AFFIRMING 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 Gerald P. Maguire ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on March 8, 2010, pursuant to an Order for Hearing and Notice of Hearing issued January 14, 2010. Commissioner Wickersham, Chairperson of the Commission was the presiding hearing officer. Commissioner Warnes was absent. Commissioner Wickersham as Chairperson designated Commissioners Wickersham, Salmon, and Hotz as a panel of the Commission to hear the appeal. Commissioner Salmon was excused. Commissioner Hotz was present. The appeal was heard by a quorum of a panel of the Commission.

Gerald P. Maguire 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 (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, 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: N 20 Ft Lt 9 & S 40 Ft 60 x 152 Lot 10 Block 0 Okeefes Hillcrest, Omaha, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$7,500.00	Unknown	\$7,500.00
Improvement	\$156,500.00	Unknown	\$156,500.00
Total	\$164,000.00	Unknown	\$164,000.00

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 January 14, 2010, set a hearing of the appeal for March 8, 2010, at 1:00 p.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:

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Land value	\$ 7,500.00
Improvement value	<u>\$156,500.00</u>
Total value	<u>\$164,000.00.</u>

### **III. APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in this appeal is over all questions necessary to determine taxable value. Neb. Rev. Stat. §77-5016(7) (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. “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 parcel. The improvement on the parcel is a 2½ story residence built in 1918 with a 1,260 square foot unfinished basement.

The Taxpayer testified that in his opinion actual value of the subject property as of January 1, 2008 was \$160,000. Actual value as determined by the County Board was \$164,000. The Taxpayer asserted that taxable value of the subject property was not equalized with the taxable value of other residential parcels in the neighborhood of the subject property. The physical characteristics, attributes, and amenities of the subject property and the parcels presented by the Taxpayer for comparison, with assessment and sale information, is summarized in the following table.

<b>Descriptor</b>	<b>Subject</b>	<b>Parcel 5</b>	<b>Parcel 6</b>	<b>Parcel 7</b>
Exhibit	E4:1-7	E5:1-7	E6:1-7	E7:1-7
Location	429 N 38 Ave	3811 Webster St	3846 Cass St	3822 California St
Lot Size	9,120 Sq Ft	9,515 Sq Ft	14,190 Sq Ft	8,400 Sq Ft
Condition	Average	Excellent	Average	Good
Quality	Good	Good	Good	Good
Yr Built	1918	1932	1935	1925
Exterior Walls	Frame Vinyl	Masonry Common Brick	Masonry Common Brick	Masonry Common Brick
Style	2½ Story	2½ Story	2½ Story	2½ Story
Area Above Ground	2,576 Sq Ft	2,218 Sq Ft	2,432 Sq Ft	2,493 Sq Ft
Roof Cover	Comp Shingle	Comp Shingle	Comp Shingle	Comp Shingle
HVAC	Cent Air to Air	Forced Air	Forced Air	Forced Air
Basement	1,260 Sq Ft	1,109 Sq Ft	1,216 Sq Ft	1,267 Sq Ft
Finished				634 Sq Ft
Walkout			1	
Bedrooms	5	4	4	6
Bathrooms	2	1.5	1.5	2.5
Garage Type	None	Detached	Detached	Detached
Garage Area		380 Sq Ft	864 Sq Ft	660 Sq Ft
Misc Imp	Masonry Fireplace, Wood Deck	Masonry Fireplace, Security System, Sprinkler System, Finished Attic	Masonry Fireplace, Finished Attic	3 Wood Decks, Finished Attic
Lot Value	\$7,500	\$7,500	\$9,900	\$7,200
Imp Value	\$156,500	\$134,800	\$128,000	\$147,753

<b>Descriptor</b>	<b>Subject</b>	<b>Parcel 5</b>	<b>Parcel 6</b>	<b>Parcel 7</b>
Taxable Value	\$164,000	\$142,274	\$137,980	\$154,953
Sale Date		7/30/04	10/29/04	4/25/02
Sale Price		\$249,950	\$218,000	\$225,000

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 County Board determined that actual value of the subject property was \$164,000. For reasons stated above the Commission also determines that actual value of the subject property was \$164,000. The evidence is that the ratio of assessed to actual value of the subject property is 1, that is, assessed or taxable value and actual value are equal.

The remaining question then is whether the parcels presented by the Taxpayer are assessed or taxed at less than their actual values. The Taxpayer asserted generally that all three of the parcels he presented for comparison with the subject property had garages and were brick homes. It is true that those attributes could contribute to value of a parcel. However, other attributes might detract from value. For example, the residence on the subject property is larger than the residences on the other three parcels. An examination of the table above shows other differences. In Exhibit 2, at page 3, there is a brief explanation of the methodology used to obtain an estimate of actual value for the subject property and the other three parcels submitted

by the Taxpayer. The methodology estimated actual value based on property characteristics and location variables and the impact they have on actual value. The variables and their estimated impacts on value can be seen in Exhibit 4 at page 6, Exhibit 5 at page 6, Exhibit 6 at page 6, and Exhibit 7 at page 6. The calculation shown on those pages take into account the presence or absence of garages and other factors. The presence or absence of brick on a home is not accounted for as a characteristic or attribute of the residence. The Taxpayer, however, has not produced any evidence of the effect of brick construction on the actual value of a home.

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). The only evidence of actual value for each of the parcels the Taxpayer presented is actual value as determined by the County Board. The evidence is then that the ratio of assessed to actual value for each of the parcels the Taxpayer presented is 1.

The ratios of assessed to actual value for the subject property and the parcels submitted by the Taxpayer are the same. There is no basis for relief.

## **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 not adduced sufficient, clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

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

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Land value           \$ 7,500.00

Improvement value \$156,500.00

Total value           \$164,000.00.

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 (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 2008.

7. This order is effective for purposes of appeal on October 13, 2010.

Signed and Sealed. October 13, 2010.

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Wm. R. Wickersham, 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.**

Commissioner Hotz, concurring in the result.

I concur with the order affirming the decision of the county board of equalization. I write briefly to clarify how I reach that result.

First, I would find that there was no evidence presented that any of the comparable parcels were assessed or taxed at less than their actual values.

Second, I would include in the Conclusions of Law section of the Order that the Taxpayer did not rebut by competent evidence the presumption that the county board of equalization faithfully performed its official duties and acted upon sufficient competent evidence to justify its actions. *City of York v. York County Bd. Of Equalization*, 266 Neb 297, 664 N.W.2d 445 (2003).

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Robert W. Hotz, Commissioner