

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

MARY T. TORCZON,	)	
	)	
Appellant,	)	Case No. 09R 043
	)	
v.	)	DECISION AND ORDER
	)	AFFIRMING THE DECISION OF
SARPY COUNTY BOARD OF	)	THE SARPY COUNTY BOARD OF
EQUALIZATION,	)	EQUALIZATION
	)	
Appellee.	)	

The above-captioned case was called for a hearing on the merits of an appeal by Mary T. Torczon ("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 August 2, 2010, pursuant to an Order for Hearing and Notice of Hearing issued April 1, 2010 as amended by an Order dated May 11, 2010. Commissioner Warnes, Vice-Chairperson of the Commission, was the presiding hearing officer. Commissioner Wickersham, Chairperson of the Commission, was absent. Commissioner Warnes, as Vice-Chairperson acting in the absence of the Chairperson, designated Commissioners Warnes, 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.

Mary T. Torczon was present at the hearing. Brian C. Doyle appeared as legal counsel for the Taxpayer.

John Reisz, a Deputy County Attorney for Sarpy County, Nebraska, was present as legal counsel for the Sarpy 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.

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2009, 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, 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 Sarpy 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: LOT 7 TIBURON ESTATES, Sarpy County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$130,000.00	\$105,000.00	\$130,000.00
Improvement	\$726,133.00	\$701,334.00	\$726,133.00
Total	\$856,133.00	\$806,334.00	\$856,133.00

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 April 1, 2010, as amended by an Order issued on May 11, 2010, set a hearing of the appeal for August 2, 2010, at 11:00 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	\$130,000.00
Improvement value	<u>\$726,133.00</u>
Total value	<u><u>\$856,133.00.</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) (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) (Reissue 2009).
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 1 ½ story house with 4,648 square feet of living area, and 4,298 square feet of basement of which 2,304 square feet is finished. (E6:2). The house was built in 2003 and has been rated very good+ for quality and average for condition. (E6:2).

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, and in addition the Taxpayer has asserted that taxable value of the subject property as of January 1, 2009, is not equalized with the taxable value of other real property.

The appraiser for the Taxpayer testified that he had appraised the subject property and his opinion of actual value for the property as of December 31, 2008 was \$730,000. (E26:5). The appraiser for the Taxpayer testified that he used four alleged comparable parcels to compare to the subject property using the sales comparison approach to valuation. The four alleged comparable parcels used by the appraiser are shown in Exhibit 26, pages 5 and 6. The Commission notes that the property record files for those parcels alleged to be comparable to the subject property shown in the appraisal were not provided by the Taxpayer. This is in contradiction to the Commission's Order for hearing, paragraph 13, which requires such

production if the Taxpayer is going to use the parcel for comparison purposes. Without the property record files for the properties alleged to be comparable, the Commission is limited in its ability to compare the alleged comparable parcels to the subject property, having only the information in the appraisal report..

### **Quality Rating for Subject Property**

Both the appraiser for the Taxpayer and the Taxpayer gave opinions that the County's rating of the quality of the subject property has resulted in an incorrect market value. The appraiser for the Taxpayer did not testify that he thought the quality rating was incorrect, but rather its application resulted in too high an assessed taxable value of the subject property for 2009 and did not reflect the correct market value. The Taxpayer testified that he disagreed with the County's rating of very good+ for the subject property. His testimony was that the quality rating for the subject property had been rated good in years prior to 2009, but it was increased to very good+ for 2009. He alleged that the quality of the subject property is the same as the other 11 homes in the area,9 of which he built, and should be rated as very good. The Taxpayer provided evidence of a list of other neighborhood homes and their quality ratings. (E14:1). The Commission notes that one other parcel on Exhibit 14 has a quality rating of very good+ (55) and one has a rating of excellent (60).

The Taxpayer provided the quality ratings for Marshall and Swift costing service which does not list a very good+ category. (E19, 20 & 21). The Taxpayer did acknowledge that the subject property had additional physical characteristics other than the alleged comparable homes in the area to include "... more tile in the basement and a built-in wall of cabinets."

The appraiser for the County testified that he valued the subject property using the cost approach to valuation and used the following rating scale for quality ratings of home construction in Sarpy County for 2009:

Excellent	60
Very Good+	55
Very Good	50
Good	40

He testified that he had inspected the subject property on May 5, 2010. His notes from the inspection are found in Exhibit 2, page 1 and dated June 25, 2010. His notes confirm that the cost approach was used to value the subject property and that the costing tables from Marshall and Swift had been used. He testified that it was his opinion the subject property was rated properly at very good+. He also testified that the above rating schedule was used uniformly throughout the County. The Commission notes that the parcel provided by the County shown in Exhibit 11 has a quality rating of very good+ .

The Taxpayer provided six alleged comparable parcels to the subject property which he referred to as being built by him in the immediate neighborhood. (E25). The subject property is shown on both Exhibit 6, page 2 and Exhibit 25, page 2. The Taxpayer tabled the six parcels on Exhibit 25, page 1. The Taxpayer in his Exhibit 25, page 1 calculated the improvement value per square foot for the six parcels using only one physical characteristic, that of gross living area, with no other physical characteristics being taken into account. No adjustments were made for differences in lot sizes. This method to compare parcels to the subject property is not an acceptable mass appraisal technique nor is it practical for making a comparison. The differences in the physical characteristics, ratings for quality and condition, year built, and style all must be

taken into account to make a comparison. The Taxpayer did not provide the property record files for the alleged comparable parcels, but rather provided “screen shots” from the Sarpy County Assessor’s website. These screen shots do not have complete information on the parcels which do not allow the Commission to make comparisons. From these screen shots, the Commission notes that all of the alleged comparable parcels are 2 story styled houses while the subject property is 1 ½ story. There are large differences in the size of the living and basement areas as well as the size of the finished basement. All of these differences must be adjusted for in order to compare the alleged comparable parcels to the subject property.

“Comparable properties” share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation*, 2<sup>nd</sup> 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*, 2<sup>nd</sup> Ed., 1996, p.103. Most adjustments are for physical characteristics. *Property Assessment Valuation*, 2<sup>nd</sup> Ed., 1996, p.105. “Financing terms, market conditions, location, and physical characteristics are items that must be considered when making adjustments . . .” *Property Assessment Valuation*, 2<sup>nd</sup> Ed., 1996, p. 98.

The appraiser for the County Assessor testified that he observed physical characteristics during his inspection of the subject property which he alleged were upgrades typical for a very good plus quality house. These “upgrades” are listed in his inspection report shown as Exhibit 2, page 1. These upgrades include “extensive use of box and vaulted ceilings. Crown moldings

and 5 to 6 inch base moldings...” Several other upgrades are shown in his inspection report and he testified to these same improvements.

The Taxpayer provided the standards for rating of quality from Marshall and Swift Residential Cost Handbook. (E19, 20 & 21). The Commission’s review of the quality rating shows that the subject property has some characteristics of the Excellent rating. (E19:1&2). Examples of physical characteristics found in the subject property by the appraiser for the County for the excellent category include floor covering - “good quality hardwood floors in the kitchen living room and formal dining room, interior finish - extensive use of box and vaulted ceilings, high quality cabinets with granite tops in the kitchen and bath.” (E2:1).

The Taxpayer alleged that there was not a defined very good+ category of quality ratings shown in the Marshall and Swift residential handbook. The appraiser for the County Assessor testified that while he did not have a separate checklist of factors of a quality rating of very good +, he alleged that the category of very good+ would be half way between good (50) and excellent (60). The Commission finds that the evidence of the appraiser for the County Assessor is credible and is given great weight especially in light of the fact he inspected the subject property and detailed reasons for increasing the quality rating to very good+.

The appraisal of real estate is not an exact science. *Matter of Bock’s Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977).

The Commission does not find merit to the other allegations testified to by the Taxpayer. A taxpayer who offers no evidence that the subject property is valued in excess of its actual value and who only produces evidence that is aimed at discrediting the valuation methods utilized by county assessor fails to meet his or her burden of proving that the value of the property was not

fairly and proportionately equalized or that valuation placed upon the 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).

There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. The presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence on appeal to the contrary. From that point on, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board...[t]he burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment. *Id.* Taxpayer must introduce competent evidence of actual value of its property in order to successfully claim that a property is overvalued. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N. W. 2d 515 (1981).

The Commission finds that the Taxpayer has not provided competent evidence to rebut the presumption that the County Board faithfully performed its duties and did have sufficient competent evidence to make its determination.

The Commission finds that the Taxpayer has not provided clear and convincing evidence that the County Board's decision was arbitrary or unreasonable. The appeal of the Taxpayer is denied.

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

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Land value	\$130,000.00
Improvement value	<u>\$726,133.00</u>
Total value	<u>\$856,133.00.</u>

3. This decision, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer, and the Sarpy 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 September 15, 2010.

Signed and Sealed. September 15, 2010.

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