

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

BELL PROPERTIES, LLC,)	
)	
Appellant,)	Case No. 10R 229
)	
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 Bell Properties, LLC ("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 February 8, 2011, pursuant to an Order for Hearing and Notice of Hearing issued December 6, 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.

Justin Horst, an officer of Bell Properties, LLC, 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, 2010, 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, 2010.

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, 2010, ("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: CROSSKEY VILLAGE - EAST LOT 45 BLOCK 0 IRREG, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$10,700.00	\$10,700.00	\$10,700.00
Improvement	\$124,600.00	\$117,550.00	\$124,600.00
Total	\$135,300.00	\$128,250.00	\$135,300.00

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 December 6, 2010, set a hearing of the appeal for February 8, 2011, at 9:00 a.m. CST.
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 2010 is:

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Land value \$10,700.00

Improvement value \$124,600.00

Total value \$135,300.00.

**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 residential parcel improved with a split entry house of 1,245 square feet of living area built in 1986. (E2:5). The house is rated average both for quality and condition. (E2:5).

The Taxpayer has asserted that actual value of the subject property as of January 1, 2010, is less than actual value as determined by the County Board.

The Taxpayer testified that the most recent sale price on July 9, 2009, as shown in Exhibit 2 page 3 of \$64,125 was for only one half of the total interest in the subject property. As a result, the Taxpayer alleged that "... the total property should be \$128,250 (\$64,125 x 2). The interest in this property was purchased from an unrelated party and represents the fair value of the property." (E4). The Taxpayer's argument rests solely on the use of sale price for his opinion of taxable value.

The Taxpayer testified that the purchase alleged to reflect fair market value was comprised of one half interest being transferred from his wife and the other half interest from a party who had owned the subject property as a tenant in common with his wife. The sale was not advertised, nor was it listed for sale on the open market or listed with a real estate broker.

From the evidence adduced, the Commission finds that the sale of the subject property to the Taxpayer for \$64,125 on February 28, 2006 was for only one half interest and was not exposed for sale on the open market. Further, the sales price of the property is but one indicia of its market value. *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 328 N.W.2d 175 (1982). In *Potts*, the court ruled "the purchase price ... standing alone ..., is not conclusive

of the actual value of property for assessment purposes, and many other matters relevant to the actual value of property appear in the record and must be considered in connection with the purchase price to determine the actual value." *Id.* at 46. *Potts* further states, "[T]he true test in all cases is to arrive at actual value, meaning value in the market in the ordinary course of trade." *Id.* at 47. Thus, the Commission determines that it must look to other indicators of market value in addition to the sale price to determine if the sale price is in fact a valid indicia of market value, and if it is not, what is the market value for the subject property. "Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach, (2) income approach, and (3) cost approach." 35 NAC 10-001.15 Neb. Rev. Stat. Section 77-212 (Reissue 2009).

The argument proposed by the Taxpayer that the sale price had been used by the County Board to value the subject property for 2010 is without merit. First, the Commission notes that the County Board relied upon a sales comparison method with multiple regression analysis.

The Commission must look to the County Board's exhibits of comparable properties and its evidence in support of its determination of actual value to further evaluate the market values for the subject property because the Taxpayer did not provide any evidence of market value other than the sale price he paid for the property on July 9, 2009.

The appraiser for the County Assessor testified that the assessed valuation for the subject property for 2010 was determined using the sales comparison approach to valuation with multiple regression analysis. A written explanation of this approach to valuation was provided by the County Board in Exhibit 2, page 7. The county's "market calculation detail" sheet is

shown on Exhibit 2, page 11. The Commission finds that the procedure used by the appraiser for the County Assessor was in accordance with professionally accepted mass appraisal standards.

The Taxpayer testified that he did not believe the correct square footage had been used for the basement area, but he had not measured the area and alleged that this discrepancy could be determined by looking at the photo and diagram on Exhibit 2 page 2. Specifically, the Taxpayer alleged that a two-stall basement garage should not have been included as part of the square footage of the basement. However, when valuing a basement garage, it is appropriate to “[A]dd lump sum to unfinished residence basement cost.” Marshall & Swift/Boeckh LLC, *Residential Cost Handbook*, Garages, (2010) at 28-29. The multiple regression model at Exhibit 2, page 11 appears to indicate that the basement garage was included in the square footage of the unfinished basement, and that a basement garage lump sum amount was added as a separate contribution to value. The Commission finds there is no competent evidence to show that the basement and garage were valued incorrectly.

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). The Commission does not find merit to the other allegations testified to by the Taxpayer.

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. In an appeal to the county board of equalization or to the district court, and from the district court to this court, the 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. *Garvey Elevators, Inc. v. Adams County Bd. of Equal.*, 261 Neb. 130 (2001). 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 had 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, 2010, is affirmed.
2. Actual value, for the tax year 2010, of the subject property is:

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Land value	\$10,700.00
Improvement value	<u>\$124,600.00</u>
Total value	<u>\$135,300.00.</u>

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 2010.
7. This order is effective for purposes of appeal on February 16, 2011.

Signed and Sealed. February 16, 2011.

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.