

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

GROVE A. DALTON,)	
)	
Appellant,)	Case No. 11OP 002
)	
v.)	DECISION AND ORDER
)	AFFIRMING THE DECISIONS OF
CASS COUNTY BOARD OF)	THE CASS COUNTY BOARD OF
EQUALIZATION,)	EQUALIZATION
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Grove A. Dalton, ("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 June 10, 2011, pursuant to an Order for Hearing and Notice of Hearing issued April 6, 2011 and amended June 8, 2011. 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.

James Riha appeared as legal counsel for the Taxpayer. Grove Dalton and his wife were present at the hearing.

Nathan B. Cox, a Deputy County Attorney for Cass County, Nebraska, was present as legal counsel for the Cass 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 (2010 Cum. Supp.). The final decision and order of the Commission in the consolidated cases is as follows.

I. ISSUES

The Commission has raised *sua sponte* the question of whether the Commission has jurisdiction to hear the appeal or petition. The issues related to that question are:

Whether the Commission has jurisdiction to hear the appeal;

Whether the Taxpayer's appeal was timely filed with the County Board;

Whether the County Board provided notice to the Taxpayer as required by Section 77-1507 of Nebraska Statutes;

Whether the Taxpayer's assertions may be heard as a petition to the Commission pursuant to Section 77-1507.01 of Nebraska Statutes.

The Taxpayer has asserted that the County Board does not have statutory authority under Section 77-1318.01 of Nebraska Statutes to assess the improvements on the property for previous years. The issues on appeal related to that assertion are:

Whether the County Board's decision to assess the improvements on the property for a previous year was unreasonable or arbitrary; and

The 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 it.
2. The parcel of real property to which the above captioned appeal pertains is ("the Subject Property") described in the table below.
3. Taxable value of the subject property placed on the assessment roll as of January 1, 2009, ("the assessment date") as determined by the County Board is shown in the following tables:

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Description: SL 1 of TL 129, WEST1/2 SW1/4, LOT 20, BLOCK 12, RANGE, Cass County, Nebraska.

	Board Determined Value	Taxpayer Asserted Value	Board Determined Value
Land	\$37,293.00	\$37,293.00	\$37,293.00
Improvements	\$320,180.00	\$15,000.00	\$320,180.00
Outbuilding	\$18,441.00	\$21,595.00	\$18,441.00
Total	\$375,914.00	\$73,888.00	\$375,914.00

4. Appeals of the County Board's decisions were filed with the Commission.
5. The Appeals were consolidated for hearing by order of the Commission.
6. An Order for Hearing and Notice of Hearing issued on April 6, 2011, amended June 8, 2011, set a hearing of the appeals for June 10, 2011, at 9:00 a.m. MDT.
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. Taxable value of each parcel for the tax year 2009 is:

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Land	\$37,293.00
Improvements	\$320,180.00
Outbuilding	\$18,441.00
Total	<u>\$ 375,914.00</u>

III. APPLICABLE LAW

1. Subject matter jurisdiction of the Commission in each of the above captioned appeals is over all questions necessary to determine taxable value. Neb. Rev. Stat. §77-5016(7) (Reissue 2009).
2. “In order that improvements to real property are properly assessed for property tax purposes, no building amounting to a value of two thousand five hundred dollars or more shall hereafter be erected, or structurally altered or repaired, and no electrical, heating, plumbing, or other installation or connection, or other improvement to real property, amounting to a value of two thousand five hundred dollars or more, shall hereafter be made until an information statement has been filed with the county assessor in the county in which the improvement is to be made... Any building permit required and issued by a county or municipal officer shall fulfill the requirements of this section if it contains the

- information required by this section and if a copy is provided to the county assessor by the officer.” Neb. Rev. Stat. §77-1318.01(1) (Reissue 2009).
3. “The information statement shall show the following:...(e) the estimated period of construction.” Neb. Rev. Stat. §77-1318.01(3) (Reissue 2009).
 4. “The county board of equalization may meet at any time for the purpose of assessing any omitted real property that was not reported to the county assessor pursuant to section 77-1318.01 ...The county board of equalization shall give notice of the assessed value of the real property to the record owner or agent at his or her last-known address.” Neb. Rev. Stat. § 77-1507(1) (Reissue 2009).
 5. “Any person otherwise having a right to appeal may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine the actual value or special value of real property for that year if a failure to give notice prevented timely filing of a protest or appeal provided for in section 77-1501 to 77-1510.” Neb. Rev. Stat. § 77-1507.01 (Reissue 2009).
 6. 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).
 7. 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).

8. The presumption disappears if there is competent evidence to the contrary. *Id.*
9. 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).
10. 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).
11. "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).
12. 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).
13. 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).
14. 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).
15. 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 Taxpayer purchased the subject property as an unimproved property on August 31, 2001. (E2:1). Subsequent to the purchase the Taxpayer applied for, and obtained, a building permit for the construction of improvements to the subject property. (E3:3). The building permit was approved on June 18, 2003. The Commission notes that the permit number of 3067 is recorded on the property record file of the subject property. (E2:1).

The building inspector for the city of Plattsmouth, Nebraska, testified that he approved the building permit. He further stated that he did not provide a copy of the approved permit to the County Assessor nor did he provide an information statement, but he did provide notice of the approval of the permit in his monthly report to the County Assessor. He testified that he was not familiar with Neb. Rev. Stat. §77-1318.01 and its requirements that an information statement be submitted to the County Assessor in order for the Taxpayer to comply with the statutory requirement that notice of the building of improvements be given to the County Assessor. The Commission notes that the language of the statute does not require that the building inspector provide a copy of the permit to the County Assessor and finds that this requirement is the responsibility of the Taxpayer.

In addition, the building permit does not include the “estimated period of construction” as

required by statute in the information statement. Neb. Rev. Stat. §77-1318.01 (3) (e). The Commission finds for the above two reasons that the requirements of Neb. Rev. Stat. §77-1318.01 (3) were not met by the Taxpayer.

The Commission is aware that the County Assessor did have notice of the start of improvements to the subject property as shown by its knowledge of the approved permit. Also, the County Assessor took photos of the subject property in January and August of 2004. The Commission does not find merit to the County Board's assertion that the work of the Taxpayer had been stopped for an excess of 6 months and thus required a new approved building permit. (E2:6). There are two reasons for this determination. First, the responsibility to determine such stoppage rests with the building inspector and he testified that he did not determine there was such a stoppage and he did not require a new building permit. Rather, he inspected the subject property on at least two occasions as shown on his notes and gave a final inspection approval on November 2, 2010. (E2:11). Secondly, it was not the responsibility of the County Assessor to inspect for such stoppages of construction and its normal procedure was to inspect only once per year.

The improvements to the subject property were completed on January 1, 2009. These same improvements were 80% completed on January 1, 2008. The Cass County Assessor learned of the completion of the improvements to the subject property in 2010. Prior to this time, the County Assessor had assessed the property beginning in 2001 as shown on its property record file. (E2:1). The County Assessor testified that he sent to the Taxpayer a letter on November 9, 2010, with attachments, indicating that he was bringing the subject property before the County Board as omitted property for the years 2008, 2009, and 2010. (E3:5) The date of the hearing

was November 16, 2010. (E3:5). The Taxpayer testified that neither he nor his wife could remember what, if anything, was included in the attachments. The County Assessor testified that the attachments included the property record cards for the subject property showing the recommended assessed values for the three years in question. The Commission notes that the recommended assessed value by the County Assessor is not necessarily the same as a determination of assessed value by the County Board.

The Taxpayer appeared at the November 16, 2010, hearing and testified that he informed the County Board of his opinion that the subject property should not be considered as omitted property because he had complied with Neb. Rev. Stat. §77-1318.01 in obtaining a building permit. He was not told when the County Board would make its decision. The County Assessor testified that the matter was included on the agenda for December 7, 2010, and that public notice of the meeting and the agenda was published. At the December meeting, the County Board assessed the subject property as omitted property. (E3:7). The Taxpayer testified that he did not get a copy of the County Board's determination of December 7, 2010. He stated that it was not until he inquired of a County Board member on January 21, 2011, about the decision of the County Board, that he was sent a copy of the decision on January 22, 2011. The County Assessor testified that it was normal procedure for the County Clerk to send out a copy of the County Board's decisions and the Commission notes that the copy of the County Board's decision of December 7, 2010, is marked "2nd copy," and the County Board notice does not indicate what the assessed value of the subject property is for the years 2008, 2009, and 2010. The Taxpayer protested the board's determination on February 7, 2011. (E4:1). The County Board denied the protest on February 15, 2011, as not timely filed. (E1:3).

The Commission finds that the County Board did assess the subject property of the Taxpayer as omitted property for 2008, 2009, and 2010 in accordance with Neb. Rev. Stat. §77-1507. However, the Commission further finds there is competent evidence that the County Board failed to provide notice of its determination of the assessed value of said property to the Taxpayer in accordance with Neb. Rev. Stat. §77-1507.01.

Because of the failure of the notice to comply with Neb. Rev. Stat. §77-1501, the appeal of the Taxpayer to the Commission is found to be a “petition” in accordance with Neb. Rev. Stat. §77-1507.01. The Commission finds that it has jurisdiction of the personal and subject matter of this appeal as a petition by the Taxpayer in accordance with Neb. Rev. Stat. §77-1507.01.

ACTUAL VALUE

The Commission turns its attention to the issue of the actual value of the subject property having determined that the Commission has jurisdiction over the Taxpayer’s petition.

The Commission has reviewed the evidence recieved regarding the actual value of the subject property. The Taxpayer did not provide sales of alleged comparable parcels to the subject property or other evidence alleging his opinion of actual value. He did not have an opinion as to the actual value of the subject property.

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 the 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.” *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 283-284, 753N.W.2d 802, 811 (2008) (quoting *Ideal Basic Indus v. Nuckolls Cty. Bd. of Equal.*, 231 Neb. 653, 654-55, 437 N.W.2d 501, 502 (1989)).

A 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 regarding actual value.

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. The actual value for the subject property, as shown on the property record file, Exhibit 2, page 1, for 2009, is \$375,914.

**V.
CONCLUSIONS OF LAW**

1. The Commission has subject matter jurisdiction in the captioned appeal.
2. The Commission has jurisdiction over the parties to the captioned 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 decisions of the County Board are unreasonable or arbitrary and the decisions of the County Board should be affirmed.

**VI.
ORDER**

IT IS ORDERED THAT:

1. The decisions of the County Board determining taxable value of the omitted real property for the subject property are affirmed.
2. Taxable value, for the tax year 2009, of each parcel described in this appeal is:

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Land	\$37,293.00
Improvements	\$320,180.00
Outbuilding	\$18,441.00
Total	<u>\$ 375,914.00</u>

3. The Appellee shall pay the sum as ordered in 11OP 001 for witness fees. Nothing in this order shall be construed to increase the witness fees in excess of the \$78.14 ordered in 11OP 001.
4. This decision, if no appeal is timely filed, shall be certified to the Cass County Treasurer, and the Cass County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2010 Cum. Supp.).
5. Any request for relief, by any party, which is not specifically provided for by this order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This decision shall only be applicable to tax year 2009.
8. This order is effective for purposes of appeal on June 30, 2011.

Signed and Sealed. June 30, 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 (2010 CUM. SUPP.), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.