

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

JOHN A. KREUSCHER,)	
)	
Appellant,)	Case No. 09R 100
)	
v.)	DECISION AND ORDER
)	REVERSING THE DECISION OF
DAWSON COUNTY BOARD OF)	THE DAWSON COUNTY BOARD OF
EQUALIZATION,)	EQUALIZATION
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by John A. Kreuscher ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Holiday Inn Express, 508 2nd Avenue South, Kearney, Nebraska, on July 14, 2010, pursuant to an Order for Hearing and Notice of Hearing issued April 20, 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.

John A. Kreuscher was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Elizabeth A. F. Waterman, County Attorney for Dawson County, Nebraska, was present as legal counsel for the Dawson 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 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 Dawson County Assessor, value as proposed in a timely protest, and actual value as determined by the County Board is shown in the following table:

Case No. 09R 100

Description: Tract in SE¼ Section 4, Township 11, Range 25, Dawson County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$16,313.00	\$16,313.00	\$16,313.00
Improvement	\$563,927.00	\$312,101.00	\$563,927.00
Total	\$580,240.00	\$328,414.00	\$580,240.00

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 20, 2010, set a hearing of the appeal for July 14, 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. Equalized taxable value of the subject property as of the assessment date for the tax year 2009 is:

Case No. 09R 100

Land value \$ 16,313.00

Improvement value \$330,603.00

Total value \$346,916.00.

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. “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)

IV. ANALYSIS

The subject property is an improved parcel adjoining the city of Gothenburg in Dawson County. The improvement on the parcel is a 3,072 square foot residence, with a 3,072 square foot finished basement and a 1,318, square foot attached garage. The Taxpayer contends that

taxable value of the subject property is not equalized with the taxable values of other similarly situated parcels.

The Taxpayer submitted as Exhibits 6 through 18 the property record files for various parcels he considered comparable to the subject property. An analysis of information from the property record files for those parcels was presented as Exhibit 3:1. Eight of the twelve parcels submitted by the taxpayer were also analyzed by an appraiser who appeared on behalf of the County Board. The appraiser's analysis appears as page 4 of Exhibit 2.

The cost approach includes six steps: “(1) Estimate the land (site) value as if vacant and available for development to its highest and best use; (2) Estimate the total cost new of the improvements as of the appraisal date, including direct costs, indirect costs, and entrepreneurial profit from market analysis; (3) Estimate the total amount of accrued depreciation attributable to physical deterioration, functional obsolescence, and external (economic) obsolescence; (5) Subtract the total amount of accrued depreciation from the total cost new of the primary improvements to arrive at the depreciated cost of improvements; (5) Estimate the total cost new of any accessory improvements and site improvements, then estimate and deduct all accrued depreciation from the total cost new of these improvements; (6) Add site value to the depreciated cost of the primary improvements, accessory improvements, and site improvements, to arrive at a value indication by the cost approach.” *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, pp. 128 - 129.

The property record file for the subject property shows use of the cost approach to develop an estimate of value. (E2:11-12). The property record files for the 12 parcels submitted by the Taxpayer also show use of the cost approach to develop an estimate of value. (E7:6, E8:6,

E9:7, E10:7, E11:7, E12:6, E13:7, E14: 7, E15: 7, E16:8, E17:6, and E18:6). Taxable value of the subject property as determined by the County Board or County Assessor is not, however, the estimate of value based on use of the cost approach. Taxable values of the comparison parcels were determined based on an assigned value per square foot of above ground living space.

Exhibit 8, page 6, illustrates the use of the square foot method to determine value. For example, Exhibit 8, page 6, shows a residence with 2,233 square feet of above ground living space.

(E8:6). The estimate of value is obtained by multiplying the 2,233 square feet of above ground living space by \$112. The product of that multiplication is \$250,096. (E8:6). The property record card shows an allocation of \$250,096 between land and improvements of \$230,581 for improvements and \$19,515 for land. (E8:2).

The property record files do not, however, show uniform application of the square foot valuation methodology. Some of the records are unclear or do not contain notes indicating the basis for determining value. The Commission has noted the following examples:

Value as indicated by the cost approach for the parcel described in Exhibit 7 is \$296,340. (E7:6). Taxable value of the parcel for tax year 2009 is \$237,000. (E7:1). The basis for the \$237,000 determination of taxable value of the parcel described in Exhibit 7 for tax year 2009 is not disclosed in the record;

Value as indicated by the cost approach for the parcel described in Exhibit 9 is \$292,675. (E9:7). Taxable value of the parcel for tax year 2009 is 231,176. (E9:1). The basis for the \$231,176 determination of taxable value of the parcel described in Exhibit 9 for tax year 2009 is not disclosed in the record;

Value as indicated by the cost approach for the parcel described in Exhibit 14 is \$366,940. (E14:7). Taxable value of the parcel for tax year 2009 is \$272,515. (E14:1). The records for the parcel described in Exhibit 14 show a handwritten value of \$296,185 dated 2/8/10. \$296,185 is the sum of three amounts that appear on page 7 of Exhibit 14; \$274,175 replacement cost new; \$8,600 land; and \$13,409 garage. The basis for the \$272,515 determination of taxable value of the parcel described in Exhibit 14 for tax year 2009 is not disclosed in the record;

Value as indicated by the cost approach for the parcel described in Exhibit 15 is \$278,445. (E15:7). Taxable value of the parcel for tax year 2009 is \$263,925. (E15:2). The records for the parcel described in Exhibit 15 show a handwritten value of \$265,245 dated 2/8/10. \$265,245 is the sum of three amounts that appear on page 7 of Exhibit 15; \$234,285 replacement cost new; \$23,775 land; and \$7,185 outbuildings. The basis for the \$263,925 determination of taxable value of the parcel described in Exhibit 15 for tax year 2009 is not disclosed in the record;

The evidence is then that four of the 12 property record files submitted by the Taxpayer do not contain enough information to determine the basis for valuation of the parcel for purposes of taxation in the year 2009. As noted, eight of the 12 property record files submitted by the Taxpayer were also submitted by the County Board. An examination of the eight property record files submitted by the County Board confirms the deficiencies in the records as noted.

Each County Assessor is required to maintain an assessment record which, among other information, contains four or more prior year's histories of the final assessed value of land and improvement. Also a complete history of each incremental adjustment or change made within an

assessment year to the assessed value of the parcel recorded in the file, including the nature of the change and an indication of the assessment body or official ordering the change. 350 Neb. Admin. Code, ch. 10, §004.01(B)(5) (3/09). An examination of the records for the parcels described in Exhibits 6 through 18 shows only changes in value as determined by the County Assessor. The County Assessor's property record file is also required to contain a correlation section that summarizes the results of each approach to value that has been completed for the parcel and a narrative statement that provides an explanation of the correlation process and the final estimate of value. 350 Neb. Admin. Code ch. 10, §004.01B(7) (3/09). The evidence in this appeal is that cost approach estimates of value were developed for the subject property and the comparison parcels. In addition to the cost approach, a value was estimated for each of the comparison parcels using what was described as a "square foot" methodology. Actual value for most of the comparison parcels was determined using the square foot methodology. The basis for determining actual value for four of the comparison parcels is unknown.

Nebraska law does not require that a single methodology be used to determine actual value. Neb. Rev. Stat. §77-112 (Reissue 2009). In fact, Nebraska law expressly provides for the use of three or more methods to determine actual value; the sales comparison approach, the income approach, the cost approach or other professionally accepted mass appraisal techniques. Neb. Rev. Stat. §77-112 (Reissue 2009). Nebraska law does require, however, that if differing methods are used to determine actual value the results be correlated to a common standard. *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987). The appraiser appearing on behalf of the County Board stated his opinion that values determined using the square foot method were actual values. The appraiser also expressed his opinion that

use of the cost approach to determine actual value of the subject property did not result in an equalized taxable value for the subject property. The record supports that opinion. Estimates of value using the cost approach were not used to determine actual value of any parcel offered as a comparison parcel by the Taxpayer or the County Board. The property record files in evidence show a failure of the County Assessor to comply with record keeping requirements that might explain the differential treatment of the subject property. The Taxpayer has shown a failure of plain duty and differential assessment methods resulting in values that are not correlated to a common standard.

The Taxpayer presented an analysis of 12 parcels and testified that he believed the equalized taxable value of the subject property was \$298,617, derived from the average square foot of assessed value of above ground living space for the residences on the comparison parcels multiplied by the above ground living space for the residence on the subject property plus the contribution to value of the land ($\$102.30 \times 3,072 = \$282,304 + \$16,313 = \$298,617$).

The appraiser appearing for the County Board offered an opinion based on the valuation per square foot of above ground living space of the residences on the comparison parcels adjusted for differences between the subject property and each comparison parcel. The analysis of the appraiser is analogous to the method used to make adjustments in the sale price of a comparison parcel to indicate actual value of a subject property. Adjustments as made by the appraiser and the resulting values per square foot of above ground living space of the residence is shown in Table 1, attached to this order.

A review of Table 1 and its supporting property record files shows various data errors which affect the appraiser's analysis and results. Tables 2, 3, and 4, attached to this order are

extractions of data from the property record files of the subject property and the comparison parcels. Table 5, attached to this order, shows corrections to the assessment data based on the property record files and changes to the results based on the methodology as described by the appraiser.

The above ground living area of the residence on the subject property is larger than the above ground living area of the residence on any of the comparison parcels. The appraiser adjusted for that difference determining the square foot differential of the above ground living area for each residence and then multiplying that number by \$12. The desired result of the adjustment is to show, based on square feet of above ground living space alone, what assessed value of the comparison parcel would be if its above ground living space were the same size as the subject property.

Adjustments were also made for “Bsmt SF,” and “Bsmt Fin” on a per square foot basis.

Adjustments made for “Age,” “Gar,” “FP” and “Q & C” were not made on a per square foot basis.

The value stated in the **Total** column simply accumulates adjustments made on any basis to arrive at an estimated total valuation of a comparable parcel assuming it were more like the subject property.

The Taxpayer noted that the per square foot calculations after adjustments of the appraiser for each comparison parcel were based on the unadjusted square feet of above ground living space in the residence on the comparison parcel. The Taxpayer asserted that the resulting assessed value per square foot calculation should be the quotient of a division of the **Total** column by the square feet of above ground living space found in the residence on the subject

property because the comparison parcel has been adjusted to be “like” the subject. The Commission agrees with the Taxpayer. A mathematical test illustrates why the Taxpayer’s contention is important. Table 2 shows that after adjustment, the indicated assessed values of the comparison parcels range from \$279,597 to \$360,212. Because assessed values of the comparison parcels have been adjusted reflecting differences between the subject property and the comparison parcels assessed value of the subject property should be in the range of the comparables. If, however, the lowest per square foot value shown in the “PerSF” column of table 2 is applied to the subject property, the indicated value is \$416,378 ($\$135.54 \times 3,072 = \$416,378$). The result of the lowest per square foot calculation is above the highest value shown in the range under the **Total** column. If the Total column is divided by the square feet of above ground living area of the subject property no difference can exist as both the divisor and the multiplicand are the same number. Table 6 attached to this order illustrates the differences in PerSF that result from an appropriate calculation of the “PerSF” value.

An appraisal was received indicating that actual value of the subject property as of January 15, 2009, was \$448,000. (E19:9). Construction of improvements was completed in tax year 2008, at a cost of \$693,953. The County Board determined that actual value of the subject property was \$580,240. (E1). The issue presented in the appeal was not actual value, but equalized taxable value of the subject property as of January 1, 2009. Both the Taxpayer and the County Board produced an equalization analysis based on the “PerSf” contribution to assessed value of various residences.

The contribution to actual value of all residences except the residence on the subject property was determined based on a “PerSf” basis. The basis for the “PerSf” estimate of value is

not shown in all of the property record cards, however the contribution to value of the residential improvements on each parcel as shown in the assessment records is lower than the contribution to value indicated by the cost approach worksheets for each parcel submitted as a comparable by the County Board. (See footnotes to tables 3,4, and 5). The contribution to actual value made by the residence on the subject property was determined by use of the cost approach. (E2:4). The evidence is that, had the contribution to value of the residence on the subject property been determined on the "PerSF" basis it would have been less than as determined using the cost approach. Uniformity, as a requirement of equalization, does not require that identical methods be used to determine taxable value of all parcels. See, *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987). What is required is that whatever the methods used are, that the results be correlated to a common standard ie. actual value. *Id.* It is apparent that use of the cost approach as shown in the exhibits is not correlated with the values indicated by use of the "PerSF" technique. The Taxpayer is entitled to valuation on a basis that is correlated or in this case equivalent to the value that would have been determined using the "PerSF" techniques. Because the parcel was not valued using the "PerSF" technique, the evidence of value using that method is indirect and requires an analysis of application of the "PerSF" techniques for the valuation of other parcels. The County Board acknowledged the necessity of that analysis with the submission of Exhibit 2 Page 4 and the testimony of its appraiser. Exhibit 2 page 4 is attached to this order as Table 1. As previously discussed, various errors appear in the data presented in Table 1. Table 2, attached to this order, shows the corrections to the Table 1 data and the data in Tables 3, 4, and 5 shows the basis for those corrections. The Taxpayer testified that several of the residences had more finished basement than shown in the assessor's

records. The Taxpayer did not identify the residences with greater finished basement nor did he suggest how much additional basement was present or the basis for his testimony. No adjustments were made based on the Taxpayer's testimony that some residences contained additional finished basement. The Taxpayer testified that the assessment records for C# 1636 did not reflect the fact that the residence was completely remodeled after its purchase in 2008. Whether the remodeling was completed by January 1, 2009, is unknown and whether the remodeling affected any of the attributes for which adjustments were made such as size is unknown. Table 6 shows the effect of correcting various data errors and correcting the method for determining value "PerSF". No adjustments were made based on the Taxpayer's testimony that the residence for parcel C#1636 had been remodeled. Table 6 as produced by the County Board is then the basis for the further discussion.

As shown in Table 6, the three parcels requiring the least adjustment to be made comparable to the subject property are C# 1665 ($27,699 + 40,000 = 67,699$), C# 2182 (25,645), and C# 5378 (54,975). The appraiser identified C# 1665 and C# 2182 among the parcels most comparable to the subject property. The appraiser also identified C# 1462 as being comparable to the subject property. However, that conclusion was based on incorrect data in the spreadsheet. The correct data and a table showing the elements of comparability for the subject parcel and three parcels deemed comparable by the appraiser are set out in the table below.

Descriptor	Subject	Comp 1	Comp 2	Comp 3
Exhibit	E2:6-12	E2:24-29	E2:30-35	E2:48-52
Ident number	5522	1665	2182	1462
Lot Size	2.05 A ¹	16,038.265 Sq Ft	24,000 Sq Ft	18,900 Sq Ft
Condition	Average	Good	Good	Good
Quality	Very Good	Good	Very Good	Good/VG
Yr Built	2008	2000	1999	1993
Exterior Walls	BrkVenr 92% StnVenr 8%	BrkVenr	BrkVenr	BrkVenr
Style	1 Story	1 Story	1 Story	1 Story
Total Area	3,072	2,697	2,931	2,771
Roof Cover	Comp Shg	Comp Shg	Comp Shg	Shake
HVAC	Ht Pump	Ht Pump	Ht Pump	Wrmcool
Basement	3,072	2,545	2,291	2,771
Finished	3,072	2,545	2,291	2,632
Fixtures	17	18	15	16
Fireplaces	2	2	1	2
Garage Type	Attached	Attached	Attached	Attached
Garage Area	1,318	776	1,241	1,065
Misc Imp	Sprinklers	Sprinklers	Sprinklers	Sprinklers
Lot Value	\$16,313	\$17,642	\$33,600 ³	\$20,790
Res Value	\$562,427	\$292,513 ^{4 2}	\$303,465 ⁴	\$297,875 ⁵
Other Imp Value	\$1,500			
Taxable Value	\$580,240	\$310,155	\$337,065	\$318,665

1. A note on page 11 of Exhibit 2 shows the size of the parcel to be 1.06 acres. Another reference on the same page shows the six to be 2.05 acres. Exhibit 2 page 6 shows that 1.06A was deleted and 2.05 acres was inserted.

2. The contribution to value of the residence as shown on Exhibit 2 page 29 is \$395,015. The contribution to value of the improvements as shown on Exhibit 2 page 24 is \$292,513. Page 24 of Exhibit 2 is the assessment record and the value shown on that page was subject to tax for the year 2009.

3. The contribution to value of the land component as shown on Exhibit 2 page 35 is \$26,400. The contribution to value of the land component as shown on Exhibit 2 page 30 is \$33,600. Page 30 of Exhibit 2 is the assessment record and the value shown on that page was subject to tax for the year 2009.

4. The contribution to value of the residence as shown on Exhibit 2 page 35 is \$469,210. The contribution to value of the improvements as shown on Exhibit 2 page 30 is \$303,465. Page 30 of Exhibit 2 is the assessment record and the value shown on that page was subject to tax for the year 2009.

5. The contribution to value of the residence as shown on Exhibit 2 page 52 is \$401,175. The contribution to value of the improvements as shown on Exhibit 2 page 48 is \$297,875. Page 48 of Exhibit 2 is the assessment record and the value shown on that page was subject to tax for the year 2009.

A value "PerSF" cannot be calculated for Comp 3, the C# 1462, parcel because Adjustments for quality rating 3.5 and 4 appear in the appraiser's worksheet but an adjustment for a quality rating of 4.5 does not appear in the worksheet and the proper adjustment for the difference in quality ratings cannot be determined from the evidence. The C# 2182 parcel, Comp 2 required the least adjustment and was selected by the appraiser as a comparable parcel. Comp 2 based on its quality of construction, size of residence and size of garage is the most comparable parcel for which data was submitted. The appraiser testified that taxable value of the comparables was determined based on value "PerSF" of the residence plus other improvements and land. How the "PerSF" contribution to value of each residence was determined is not in evidence except a declaration that it was derived from the market. However, the manner in which the market was used to determine "PerSF" values was not explained. The evidence does show the "PerSF" value for each of the residences included in the appraisers list of comparables as derived from the data in Tables 3, 4, and 5 (Parcel 1, $\$217,062 \div 2,370 = \91.58 ; Parcel 2, $\$223,685 \div 1,851 =$

\$120.85; Parcel 3, $\$292,513 \div 2,697 = \108.46 ; Parcel 4, $\$303,465 \div 2,931 = \103.54 ; Parcel 5, $\$255,025 \div 2,525 = \101.00 ; Parcel 6, $\$231,200 \div 2,312 = \100 ; Parcel 7, $\$297,875 \div 2,771 = \107.50 ; Parcel 8, $\$171,182 \div 1,885 = \90.81). It does not show that the contribution to value of the various residences was determined from a table or chart or in some other systematic manner. If the subject property is valued on the same ad hoc basis, the “PerSF” contribution to value of the most comparable residence is appropriate to determine the equalized contribution to value of the residence on the subject property. The adjusted contribution to value of the residence on Comp 2, parcel C# 2182, as shown on Table 6 is \$329,103 or \$107.13 “PerSF”.

In sum, the County Board’s determination of actual value was based on use of the cost approach. An appraiser appearing on behalf of the County Board testified that the actual value as determined by the County Board was not equalized with actual values of other residential parcels which were determined using the “Per SF” method. The appraiser demonstrated a methodology for determining the equalized taxable value of the subject property using assessment information from comparable parcels. The Commission has determined that the methodology demonstrated by the appraiser is appropriate. The County Board furnished copies of the assessment records for all of the parcels analyzed by the appraiser. The Commission extracted data from those records as shown in Tables 2, 3, and 5. A comparison of the data on the assessment records and the data shown by the appraiser on Table 1 revealed various data errors. Using the data from the property record files, corrections were made to the appraiser’s data as shown in Exhibit 2. The appraiser’s description of his adjustment methodology then allowed the Commission to make corrections to his adjustments as shown in Table 6 and derive an appropriate basis for determining the equalized taxable value of the subject property.

Equalized taxable value of the subject property for tax year 2009 is \$346,916, the sum of the contribution to value of the residence, at \$107.13 “PerSF”, the other improvements, sprinklers, and the land. $(3,072 \times \$107.13 = \$329,103 + \$1,500 + \$16,313 = \$346,916)$.

**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 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 vacated and 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 vacated and reversed.
2. Equalized taxable value, for the tax year 2009, of the subject property is:

Case No. 09R 100

Land value	\$ 16,313.00
Improvement value	<u>\$330,603.00</u>
Total value	<u><u>\$346,916.00.</u></u>

3. This decision, if no appeal is timely filed, shall be certified to the Dawson County Treasurer, and the Dawson 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 May 11, 2011.

Signed and Sealed. May 11, 2011.

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.

I concur in the result, that equalized taxable value of the subject property for the tax year 2009 is \$346,916.

Robert W. Hotz, Commissioner

Table 1

Adjmnts

C#	Age	Q	sf	Bst SF	Bsmt Fn	Age	SF	Bsmt SF	Bsmt Fin	Gar	FP	Imp	Adjmnts	Q & C Adj	Total	PerSF
5522	2008	5	3072	3072	3072	<u>500</u>	<u>25</u>	<u>8</u>	<u>12</u>	<u>5000</u>	<u>2000</u>	563927				183.57
1636	1976	4	2370	1470	1362	16000	17550	12816	20520	5000	2000	217062	73886	40000	330948	139.64
720	2001	4	1851	1851	1851	3500	30525	9768	14652	0	2000	223685	60445	40000	324130	175.11
1665	2000	4	2679	2545	0	4000	9375	3000	0	5000	0	292513	21375	40000	353888	131.22
2182	1999	3.5	2931	2291	2291	4500	3525	6248	9372	0	2000	303465	25645	55000	384110	131.05
5378	1997	5	2525	1632	1632	5500	13675	11520	17280	5000	2000	287585	54975	0	342560	135.67
5522	1994	3.5	2312	1600	1600	7000	19000	11776	17664	5000	2000	231200	62440	55000	348640	150.80
1462	1993	3.5	2771	2771	2632	7500	7525	2408	5280	0	0	297875	22713	55000	375588	135.54
1744	1992	4	1885	1885	1885	8000	29675	9496	14244	5000	2000	171182	68415	40000	279597	148.33
															Mean	143.42

Age: The subject property has the newest construction. An adjustment of \$500 per year was made for each year of difference between the age of the subject and a comparison parcel.

SF: The subject property has the largest area of above ground living space in the residence. An adjustment of 25 per square foot of above ground living space was made for each square foot of difference between the above ground living space of the residence on the subject property and above ground living space of the residence on each comparison parcel.

Bsmt SF: The subject property has the largest basement area in the residence. An adjustment of \$12 per square foot of basement area was made for each square foot of difference between the basement area of the residence on the subject property and basement area of the residence on each comparison parcel.

Bsmt Fin: The subject property has the largest finished area in the basement of the residence. An adjustment of \$25 per square foot of finished basement area was made for each square foot of difference between the finished basement area of the residence on the subject property and finished basement area of the residence on each comparison parcel.

Gar: The attached garage on the subject property contains 1,318 square feet. Adjustments were made for smaller garages on five of the comparison parcels.

FP: The residence on the subject property contains two fireplaces. An adjustment was made for those residences with 1 fireplace.

Imp: The contribution to value of improvements as shown on the assessment records.

Adjmnts: The sum of the adjustments

Q & C Adj: Quality of the residence is rated as very good and its condition as average in the assessment records. Adjustments were made for those residences with less than very good quality ratings.

Total: The sum of the Imp column, the Adjmnts column and the Q & C Adj column.

PerSF: The quotient of the total column divided by the Sf column.

Table 2 All changes from Table 1 in bold **Adjmnts**

C#	Age	Q	sf	Bst SF	BsmtFn	Age	SF	Bsmt SF	Bsmt Fin	Gar	FP	Imp	Adjmts	Q & C Adj	Total	PerSF
5522	2008	5	3072	3072	3072	<u>500</u>	<u>25</u>	<u>8</u>	<u>12</u>	<u>5000</u>	<u>2000</u>	563927				183.57
1636	1976	4	2370	1470	1362	16000	17550	12816	20520	5000	2000	217062	73886	40000	330948	139.64
720	2001	4	1851	1851	1851	3500	30525	9768	14652	0	2000	223685	60445	40000	324130	175.11
1665	2000	4	2679	2545	2545 ¹	4000	9375	3000	6324 ²	5000	0	292513	27699 ³	40000	360212 ⁴	134.46 ⁵
2182	1999	5 ⁶	2931	2291	2291	4500	3525	6248	9372	0	2000	303465	25645	0 ⁷	329110 ⁸	112.29 ⁹
5378	1997	5	2525	1632	1632	5500	13675	11520	17280	5000	2000	255025 ¹⁰	54975	0	310000 ¹¹	122.77 ¹²
5522	1994	4 ¹³	2312	1600	1600	7000	19000	11776	17664	5000	2000	231200	62440	40000 ¹⁴	333640 ¹⁵	144.31 ¹⁶
1462	1993	4.5 ¹⁷	2771	2771	2632	7500	7525	2408	5280	0	0	297875	22713	Unknown ¹⁸	375588	Unknown ¹⁸
1744	1992	4	1885	1885	1885	8000	29675	9496	14244	5000	2000	171182	68415	40000	279597	148.33
															Mean	139.06 ¹⁹

1. Page 29 of Exhibit 2 shows that the residence on the parcel has 2,545 square feet of partition finish in the basement. The appraisers worksheet at page 4 of Exhibit 2 showed no finished basement.

2. $3072 - 2545 = 527 \times 12 = 6324$.

3. $4000 + 9375 + 3000 + 6324 + 5000 = 27699$.

4. $292513 + 27699 + 40000 = 360212$.

5. $360212 \div 2679 = 134.46$.

6. Page 35 of Exhibit 2 shows the quality rating to be 5. The appraiser's worksheet at page 4 of Exhibit 2 showed quality to be 3.5.

7. The quality rating of the subject is 5 and its condition is average. The condition of this comparison parcel is good. Using the methodology of the appraiser no adjustment would be made for Q & C.

8. $303465 + 25645 = 329110$.

9. $329110 \div 2931 = 112.29$.

10. The contribution to value of the residence as shown on Exhibit 2 page 41 is \$344, 930 by one calculation and \$274,175 by another. The contribution to value of the residence as shown on Exhibit 2 page 36 is \$255,025.

11. $255,025 + 54975 = 310000$.

12. $310000 \div 2525 = 122.77$.

13. Page 47 of Exhibit 2 shows the quality rating to be 4. The appraiser's worksheet at page 4 of Exhibit 2 showed quality to be 3.5.

14. The quality rating of the subject is 5 and its condition is average. The condition of this comparison parcel is average. Using the methodology of the appraiser an adjustment of 40000 would be made for Q & C. An adjustment of 55000 is shown on the appraiser's worksheet at page 4 of Exhibit 2.

15. $231,200 + 62440 + 40000 = 333640$.

16. $333640 \div 2312 = 144.31$.

17. Page 52 of Exhibit 2 shows the quality rating to be 4.5. The appraiser's worksheet at page 4 of Exhibit 2 showed quality to be 3.5. The quality rating of the subject is 5 and its condition is average. The condition of this comparison parcel is good. Using the methodology of the appraiser the adjustment that should be made for Q & C is unknown. The adjustment shown on the appraiser's worksheet is incorrect based on the methodology employed for development of the worksheet. Because an appropriate adjustment cannot be determined, the parcel will be removed from further consideration.

18. Adjustments for quality rating 3.5 and 4 appear in the appraiser's worksheet. An adjustment for a quality rating of 4.5 does not appear in the worksheet.

19. Calculation does not include the subject property.

Table 6 All changes from table 1 in bold **Adjmnts**

C#	Age	Q	sf	Bst SF	Bsmt Fn	Age	SF	Bsmt SF	Bsmt Fin	Gar	FP	Imp	Adjmts	Q & C Adj	Total	PerSF
5522	2008	5	3072	3072	3072	<u>500</u>	<u>25</u>	<u>8</u>	<u>12</u>	<u>5000</u>	<u>2000</u>	563927				183.57
1636	1976	4	2370	1470	1362	16000	17550	12816	20520	5000	2000	217062	73886	40000	330848	107.70 ¹
1720	2001	4	1851	1851	1851	3500	30525	9768	14652	0	2000	223685	60445	40000	324130	105.51 ¹
1665	2000	4	2679	2545	2545	4000	9375	3000	6324	5000	0	292513	27699	40000	360212	117.26 ¹
2182	1999	5	2931	2291	2291	4500	3525	6248	9372	0	2000	303465	25645	0	329110	107.13 ¹
5378	1997	5	2525	1632	1632	5500	13675	11520	17280	5000	2000	255075	54975	0	310000	100.91 ¹
5522	1994	4	2312	1600	1600	7000	19000	11776	17664	5000	2000	231200	62440	40000	333640	108.61 ¹
1462	1993	4.5	2771	2771	2632	7500	7525	2408	5280	0	0	297875	22713	Unknown	375588	Unknown ²
1744	1992	4	1885	1885	1885	8000	29675	9496	14244	5000	2000	171182	68415	40000	279597	91.01 ¹
															Mean	105.45 ³

1. The “PerSF” number found in the appraiser’s worksheet is the quotient of the “**Total**” column divided by the “**sf**” column. The “**Total**” column reflects the adjustments necessary to make comparison parcels comparable to the subject property. The “**sf**” of the subject property is 3072. After adjustment, the comparison parcels should be equivalents of the subject property. The “PerSF” calculation should be made on a common basis, the sf of the subject property.
2. The “PerSF” for C# 1462 was not recalculated for reasons stated in footnote 18 of Table 2.
3. Calculation does not include subject property