

**NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

SCOTT A. POHL,)	
)	
Appellant,)	CASE NO 05R-076
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE DOUGLAS
DOUGLAS COUNTY BOARD OF)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	
)	

The above-captioned case was called for a hearing on the merits of an appeal by Scott A. Pohl 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 April 4, 2006, pursuant to a Notice and Order for Hearing issued January 13, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Scott A. Pohl with Mary Pohl, his spouse, ("the Taxpayer") was present at the hearing without legal counsel.

The Douglas County Board of Equalization ("the County Board") appeared through legal counsel, James R. Thibodeau, a Deputy County Attorney for Douglas County, Nebraska.

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Supp. 2005) to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case is as follows.

**I.
FINDINGS**

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described as Lot 129, Block 0, Irreg Cinnamon Creek, Omaha, Douglas County, Nebraska, ("the subject property").
2. Taxable value of the subject property placed on the assessment roll as of January 1, 2005, ("the assessment date") by the Douglas County Assessor, value as proposed by the Taxpayer in a timely protest, and taxable value as determined by the County Board is shown in the following table:

Description: Lot 129, Block 0, Irreg Cinnamon Creek, Omaha, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$31,000.00	\$-0-	\$31,000.00
Improvement	\$217,900.00	\$-0-	\$217,900.00
Total	\$248,900.00	\$224,500.00	\$248,000.00

3. The Taxpayer timely filed an appeal of the County Board's decision to the Commission.
4. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
5. An Order for Hearing and Notice of Hearing issued on January 13, 2006, set a hearing of the Taxpayer's appeal for April 4, 2006, at 3:00 p.m..
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. For reasons stated below, 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.
8. Taxable value of the subject property for the tax year 2005 is:

Land value	\$ 31,000.00
Improvement value	<u>\$217,900.00</u>
Total value	<u>\$248,900.00.</u>

II.

CONCLUSIONS OF LAW

1. Subject matter jurisdiction of the Commission in this appeal is over all issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998)
2. The Commission has jurisdiction over the parties to this appeal.
3. “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 2003).

4. 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 2003).
5. Use of all of the statutory factors for determination of actual value is not required. All that is required is use of the applicable factors. *First National Bank & Trust of Syracuse v. Otoe Cty.*, 233 Neb. 412, 445 N.W.2d 880 (1989).
6. “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).
7. 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 2003).
8. All taxable real property, with the exception of qualified agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004).
9. “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. Cons.*, art. VIII, §1
10. Equalization requires a comparison of the ratio of assessed to actual value for the subject property and comparable property. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

11. 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).
12. 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).
13. The Taxpayer must establish by clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005) *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 621 N.W.2d, 523, (2001).
14. "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).
15. 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).
16. 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).

17. “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).

III. DISCUSSION

The subject property is an improved residential parcel. (E14:1). The sole improvement on the parcel is a 2,610 square foot two story residence built in 1997, with a partially finished basement and a 638 square foot attached garage. (E14:1).

The County Board adopted the determination of value made by the County Assessor. (E1:1). There is no evidence in this case that the improvements on the subject property have ever been inspected by the County Assessor or anyone in the employ of that office. Any presumption that the decision of the County Board was correct is extinguished. *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 580, 144 N.W.2d 161, 169 (1966). The reasonableness of actual value as determined by the County Board must still be determined. *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 621 N.W.2d, 523, (2001).

The protest filed by the Taxpayer and the referee's understanding of issues raised indicate that the issue in this proceeding is the equalized taxable value of the subject property. (E16:1 and 2). Equalization requires a comparison of the ratio of taxable or assessed value to actual or fair market value for the subject property with the same ratio for comparable property. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999). The

Taxpayer presented information concerning "comparable" properties. (E1:16 - 32). The Commission's order for hearing requires a party wishing to present evidence concerning "comparable" property to submit the property record file for the "comparable" property. (Case File, Order for Hearing para 13). The contents of a property record file are prescribed by rules and regulations of the Property Tax Administrator. 350 Neb. Admin. Code, ch 10, §004.01B (03/04). Property record files were not submitted for the "comparable" properties. Whether properties are comparable requires consideration of a number of factors such as quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 98. Information necessary to a determination of comparability should be contained on a property record card. The Commission is unable to determine in this case that properties for which information was offered by the Taxpayer are "comparable".

The Taxpayer has presented information concerning the taxable "assessed" value of various properties. Equalization requires comparison of ratios of assessed value to actual value. Without evidence of actual value, ratios cannot be calculated and the necessary comparison cannot be made. The evidence of the Taxpayer in this case asks the Commission to assume that all of the "comparables" have assessed values equal to their actual values and that their ratios of assessed value to actual value are 100%. The Commission cannot make that assumption.

Implicit in the Taxpayer's position is an assumption that all parcels for which taxable "assessed" values were presented, except for the subject property, were assessed correctly. Case law provides a presumption that a decision of a County Board is correct. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W.2d 518 (2001). A presumption

that a County Board's decision is correct cannot however extend to taxable "assessed" values which have not been determined by the County Board. There is no evidence in this case that the County Board determined the value of any parcel in evidence other than the subject property. Finally case law also provides a presumption that a decision of a County Assessor is correct. *Woods v. Lincoln Gas and Electric Co.*, 74 Neb. 526, 527 (1905), *Brown v. Douglas County*, 98 Neb. 299, 303 (1915), *Gamboni v. County of Otoe*, 159 Neb. 417, 431, 67 N.W.2d 489, 499 (1954), *Ahern v. Board of Equalization*, 160 Neb. 709, 711, 71 N.W.2d 307, 309 (1955). The presumption may be extinguished. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). If the presumption of correctness is extinguished for the subject property it is the Taxpayer's burden to show why the presumption would be selectively applied if it is to be maintained for other properties.

Even if the assumption proposed by the Taxpayer was made, the burden remains to prove actual value of the subject property as of the assessment date and prove that the subject property is assessed at a value in excess of its actual value. The Taxpayer presented evidence of the taxable "assessed" value of various parcels one of which was the subject property. The Taxpayer contends that the actual or fair market value of the subject property should be determined based on the taxable or "assessed" value per square foot of the other parcels. A Taxpayer wishing to use taxable "assessed" values to prove actual or fair market value has three tests to meet; proof that the method is a professionally approved mass or fee appraisal approach; appropriate application of the approach and reliability of the evidence.

Methods through which a determination of actual value may be made for mass appraisal and assessment purposes are identified in Nebraska Statutes and include the sales comparison

approach, the income approach, the cost approach and other professionally accepted mass appraisal methods. Neb. Rev. Stat. §77-112 (Reissue 2003). A comparison of assessed values is not identified in the Nebraska Statutes as an accepted approach for a determination of actual value for purposes of mass appraisal. *Id.* Because the method is not identified in statute proof of its acceptance as a appraisal method would have to be produced. *Id.* No evidence has been presented to the Commission that comparison of assessed values is a professionally accepted mass or fee appraisal approach.

In the sales comparison approach, a sale price is an indication of actual value for a sold property but has to be adjusted to account for differences between properties to become an indicator of market value for another property. *The Appraisal of Real Estate*, Twelfth Edition, Appraisal Institute, Chs 17, 18, 19, (2001). If the “taxable ‘assessed’ value comparison approach” was shown to be a professionally accepted method of appraisal, an analysis of differences and adjustments to the taxable “assessed” value of comparison properties would be necessary to obtain an indication of value for a subject property. No adjustments or analysis of adjustments necessary to compensate for differences between the subject property and the taxable “assessed” values of other parcels was presented.

The evidence presented by the Taxpayer is not clear and convincing evidence of the actual value of the subject property as of the assessment date. The Commission is unable to determine that the value determined by the County Board is unreasonable.

**V.
ORDER**

IT IS THEREFORE ORDERED THAT:

1. The decision of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2005, is affirmed.

2. Taxable value of the subject property for the tax year 2005 is:

Land value \$ 31,000.00

Improvement value \$217,900.00

Total value \$248,900.00.

3. This decision, if no appeal is timely filed, shall be certified to the Douglas County Treasurer, and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Supp. 2005).

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 2005.

7. This order is effective for purposes of appeal April 12, 2006.

Signed and Sealed. April 12, 2006.

Wm. R. Wickersham, Commissioner

Susan S. Lore, Commissioner

Robert L. Hans, Commissioner

William C. Warnes, Commissioner

SEAL

ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW CONTAINED IN NEB. REV. STAT. §77-5019 (SUPP. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.