

**NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

FOOTE REALTY COMPANY,)	
)	
Appellant,)	CASE NO 05C-040
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE ADAMS
ADAMS 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 Foote Realty Company to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Holiday Inn Express, 508 2nd Avenue, Kearney, Nebraska, on August 14, 2006, pursuant to a Notice and Order for Hearing issued June 2, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Warnes presided at the hearing.

Robert L. Foote, President of Foote Realty Company, ("the Taxpayer") was present at the hearing without legal counsel.

The Adams County Board of Equalization ("the County Board") appeared through legal counsel, Charles A. Hamilton, a Deputy County Attorney for Adams 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 1 Blk 1 Lakeway Plaza Subdivision, Adams 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 Adams 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:

	Protested	Requested	Board of Equalization
Land	\$456,450.00	\$416,962.00	\$456,450.00
Improvements	\$1,690,545.00	\$1,540,610.00	\$1,613,550.00
Total	\$2,146,995.00	\$1,957,572.00	\$2,070,000.00

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 June 2, 2006, set a hearing of the Taxpayer's appeal for August 14, 2006, at 2:00 p.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. 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	\$456,450.00
Improvements	\$1,613,550.00
Total value	<u>\$2,070,000.00.</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. 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).

10. "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).
11. 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).
12. 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).
13. 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).

III. DISCUSSION

This appeal concerns an improved commercial property located in Hastings Nebraska. The property was purchased on February 1, 2002, for a purchase price of \$1,900,000.

Appellant's President testified that after he purchased the subject property, the property was improved at a cost of about \$200,000. This improvement was in the form of adding thicker concrete flooring to hold the lumber and heavy materials of the new hardware store which leased the property from the Taxpayer. Improvements were also made to the parking lot.

Appellant's President, testified to the negative economic factors in the local community. These negative factors are shown on appellant's Exhibit 4. These factors include a continuing population decrease which has forced the closing of businesses, job layoffs, and the vacancy of some twenty commercial properties located in the downtown area.

The subject property was leased by Appellant to "Big G Ace Hardware". Big G Ace Hardware is owned by two children of Appellant's president. A primary concern of Appellant's President is the ability of Appellant's tenants to pay rent equal to the debt service and taxes on the subject property.

Appellant's president, provided the above factors which he believes have negatively influenced the valuation of property in the Hastings area. Appellant's president, did not provide any comparable properties, or valuations, to show that the valuation assessed by the Adams County Board of Equalization on the subject property was incorrect, arbitrary or unreasonable. The Appellant did not overcome the presumption that the County Board of Equalization was correct in their valuation of the subject property.

**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	\$456,450.00
Improvement value	<u>\$1,613,550.00</u>
Total value	<u><u>\$2,070,000.00</u></u>

3. This decision, if no appeal is timely filed, shall be certified to the Adams County Treasurer, and the Adams 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 August 25, 2006.

Signed and Sealed. August 25, 2006.

Wm. R. Wickersham, Commissioner

Susan S. Lore, Commissioner

Robert L. Hans, Commissioner

SEAL

William C. Warnes, Commissioner

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.