

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

AUDREY K. GARTNER,)	
)	
Appellant,)	Case Nos 05C-120 and 05C-121
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISIONS OF THE ADAMS
ADAMS COUNTY BOARD OF)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned cases were called for a hearing on the merits of appeals by Audrey K. Gartner to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Holiday Inn Express, Kearney, Buffalo County, Nebraska, on August 17, 2006, pursuant to a Notice and Order for Hearing issued June 5, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Audrey K. Gartner and Dale W. Gartner, ("the Taxpayer") were 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 the consolidated cases is as follows.

**I.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described as shown in the following table ("the subject property").
2. Taxable value of each parcel 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 timely protests, and taxable value as determined by the County Board is shown in the following tables:

Case No. 05C-120

Description: N 20¼ Ft Lots 9-12 , except E 12 Ft Lot 9, Block 19, Original Town, City of Hastings, Adams County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 3,480.00	\$3,480.00	\$ 3,480.00
Improvement	\$66,465.00	\$14,064.00	\$58,420.00
Total	\$69,945.00	\$17,544.00	\$61,900.00

Case No. 05C-121

Description: S 20 ½ of N 81 Ft Lots 9-12, except E 12 Ft Lot 9, Block 19, Original Town, City of Hastings, Adams County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$3,520.00	\$3,520.00	\$3,520.00
Improvement	\$16,375.00	\$6,575.00	\$16,375.00
Total	\$19,895.00	\$10,095.00	\$19,895.00

3. The Taxpayer timely filed appeals of the County Board's decisions to the Commission.

4. The County Board was served with Notices in Lieu of Summons and duly answered those Notices.
5. The Taxpayer's appeals were consolidated for hearing by order of the Commission.
6. An Order for Hearing and Notice of Hearing issued on June 5, 2006, set a hearing of the Taxpayer's appeals for August 17, 2006, at 2:00 p.m. CDST.
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 2005 is:

Case No.05C-120

Land value	\$ 3,480.00
Improvement value	<u>\$58,420.00</u>
Total value	<u>\$61,900.00</u>

Case No.05C-121

Land value	\$ 3,520.00
Improvement value	<u>\$16,375.00</u>
Total value	<u>\$19,895.00.</u>

**II.
APPLICABLE LAW**

1. “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).

2. 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).
3. 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).
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 2003).
6. 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).
7. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).

8. The presumption that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
9. 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) (citations omitted)
10. The Commission can grant relief only if the Taxpayer establishes by clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005).
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. “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 composed of two parcels. Both parcels are improved with two story brick structures suitable for commercial purposes and were built in the early 1900's. The second floor of the structure on the lot described in Case No 05C-121 is unusable. The first floor of the structure on that lot is usable for limited storage. The structure on the lot described in Case No. 05C-120 has a barbershop on the first floor. The second floor of that structure has two apartments last remodeled in the 1960's. One of the apartments is rented and the other has been used for storage.

A Taxpayer testified concerning sales of property he considered to be comparable to the subject property. The Commission's order for hearing specifically required in paragraph 13 that any party wishing to offer evidence of comparable properties provide as part of the evidence a property record file from the county assessor's office. “Comparable properties” share similar 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. When using “comparables” to determine value, similarities and differences between the subject property and the comparables must be recognized. *Property*

Assessment Valuation, 2nd Ed., 1996, p.103. Property record files for comparables were not produced by the Taxpayer. Production of the property record file for a proposed comparable allows the Commission to evaluate various characteristics of the property as determined for assessment purposes. The testimony of a Taxpayer, unsupported by records the Taxpayer was directed to produce, is not clear and convincing evidence of actual value.

IV. CONCLUSIONS OF LAW

1. The Commission has subject matter jurisdiction in this appeal.
2. 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).
3. The Commission has jurisdiction over the parties to this appeal.
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.

V. ORDER

IT IS THEREFORE ORDERED THAT:

1. The decisions of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2005, are affirmed.
2. Taxable value of each parcel of the subject property for the tax year 2005 is:

Case No.05C-120

Land value	\$ 3,480.00
Improvement value	<u>\$58,420.00</u>
Total value	<u>\$61,900.00</u>

Case No.05C-121

Land value	\$ 3,520.00
Improvement value	<u>\$16,375.00</u>
Total value	<u>\$19,895.00.</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 23, 2006.

Signed and Sealed. August 23, 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.