

**NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

MICHAEL E. KLUTHE,)	
)	
Appellant,)	CASE NO 05R-292
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE LINCOLN
LINCOLN 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 Michael E. Kluthe to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in a meeting room of the Hampton Inn, North Platte, Lincoln County, Nebraska, on June 27, 2006, pursuant to a Notice and Order for Hearing issued March 8, 2006. Commissioners Wickersham, Warnes, and Lore were present. Commissioner Wickersham presided at the hearing.

Michael E. Kluthe, ("the Taxpayer") was present at the hearing without legal counsel.

The Lincoln County Board of Equalization ("the County Board") appeared through legal counsel, Joe W. Wright, a Deputy County Attorney for Lincoln 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 Pt Tract 6, Whispering Hill Subdivision, 5 Acres, Lincoln 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 Lincoln 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:

Case No. 05R-292

Description: Pt Tract 6, Whispering Hill Subdivision, 5 Acres,, Lincoln County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 13,650.00	\$ 13,650.00	\$ 13,650.00
Improvement	\$280,065.00	\$210,750.00	\$237,715.00
Total	\$293,715.00	\$224,400.00	\$251,365.00

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 March 8, 2006, set a hearing of the Taxpayer's appeal for June 27, 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	\$ 13,650.00
Improvement value	<u>\$237,715.00</u>
Total value	<u>\$251,365.00.</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. 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).
10. 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).

11. 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)
12. 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).
13. "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).
14. 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).
15. 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).

16. “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 a rural residential tract. Improvements are a metal pole barn and a residence. (E24:12). The residence is a 2 story dwelling built in 2003 with 3 bedrooms, a fireplace, 1,428 square feet of unfinished basement and an attached garage. (E24:13). The dwelling has 3,362 square feet in living space. (E24:13). The pole barn is 1800 square feet. (E24:13).

The subject property was valued using the cost approach. (E24:13). 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 evidence is that the subject property is larger and of a superior quality to any other property in its subdivision. The subject property is also on a gravel road and was not completed as of the assessment date. The Taxpayer contends that those factors would reduce the actual value of the subject property. "External Obsolescence is loss in value as a result of an impairment in utility and desirability caused by factors external to the property (outside the property's boundaries) and is generally deemed to be incurable." *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, pp. 155. No deduction for external or economic obsolescence or depreciation was taken by the County Board to calculate actual value of the subject property. (E24:13).

Because the subject property was valued using the cost approach any effect of location on value could be shown in the portion of value assigned to the land or to the improvement each value having been determined independently in that approach. The Taxpayer did not dispute the value assigned to the land on his protest or in the hearing before the Commission.

The County Board produced exhibits and testimony concerning the sale price and taxable value of various improved residential parcels it considered comparable to the subject property. The Taxpayer produced evidence that residential parcels around the comparables offered by the County Board were of similar quality and condition. The Taxpayer contended among other reasons that because the comparables offered by the County Board were not surrounded by parcels with inferior improvements that they were not comparable to the subject. In order to prevail it is necessary for the Taxpayer to do more than criticize the methods employed by the County Board. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

The Taxpayer testified that he had obtained information concerning actual value of the subject property from a real estate broker. An appraisal was not offered as evidence. The Taxpayer testified that he based his opinion of actual value as of the assessment date on a broker's estimate of value. Testimony concerning a real estate brokers estimate of market value or an opinion based on a real estate broker's estimate is not clear and convincing evidence of actual or fair market value.

The County Board had assigned a completion factor of 85% to the subject property. Assignment of the factor was not disputed. The Commission is unable to determine that the decision of the County Board was unreasonable or arbitrary.

**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	\$ 13,650.00
Improvement value	<u>\$237,715.00</u>
Total value	<u><u>\$251,365.00.</u></u>

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

Signed and Sealed. July 3, 2006.

Wm. R. Wickersham, Commissioner

Susan S. Lore, 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.