

**NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

DON HAFERBIER,)	
)	
Appellant,)	CASE NOs 05C-014, and 05C-015
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE DOUGLAS
DOUGLAS COUNTY BOARD OF)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	
)	

The above-captioned cases were called for a hearing on the merits of appeals by Don Haferbier 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 May 23, 2006, pursuant to a Notice and Order for Hearing issued February 6, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Don Haferbier, ("the Taxpayer") was present at the hearing without legal counsel.

The Douglas County Board of Equalization ("the County Board") appeared through legal counsel, James A. 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 the consolidated cases 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 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 Douglas 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-014

Description: Lots 1, 2, and N½ Lot 3, Block 1, Blaine Place, Omaha, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 22,000.00	unallocated	\$ 22,000.00
Improvement	\$429,000.00	unallocated	\$429,000.00
Total	\$451,000.00	\$365,682.00	\$451,000.00

Case No. 05C-015

Description: Lot 4 Block 1, S½ Lot 3 & N 32 FT 63.5 X 138, Blaine Place, Omaha, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$11,100.00	unallocated	\$11,100.00
Improvement	\$207,900.00	unallocated	\$204,900.00
Total	\$219,000.00	\$201,178.00	\$216,000.00

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 February 6, 2006, set a hearing of the Taxpayer's appeals for May 23, 2006, at 9:00 a.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. For reasons stated below, 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.
9. Taxable value of each parcel for the tax year 2005 is:

Case No 05C-014

Land value	\$ 22,000.00
Improvement value	<u>\$ 429,000.00</u>
Total value	<u>\$ 451,000.00.</u>

Case No 05C-015

Land value	\$ 11,100.00
Improvement value	<u>\$ 204,900.00</u>
Total value	<u>\$ 216,000.00.</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. “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. Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.” *Benyon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534, (1983).
14. 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).
15. "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).
16. 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).
17. 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).
18. “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 consists of two parcels. The parcels are improved with three apartment buildings. The parcels are adjacent to each other. The parcel subject to appeal in Case No 05C-014 is improved with two six unit apartment buildings. The parcel subject to appeal in Case No. 05C-15 is improved with a 6 unit apartment building. The apartment buildings were built in 1964 and have identical construction and are alike in their condition as of January 1, 2005. The Taxpayer contends that the taxable value of the each parcels is not equalized with like properties.

The Taxpayer offered Exhibit 18 showing the assessed values of each parcel comprising the subject property and two other properties. One property at 1928 South 55th Street is also owned by the Taxpayer and is identical to the parcel described in the appeal in Case No. 05C-015. Taxable value of the two properties after board action is identical. If the properties are otherwise identical they should share a like actual value. If the parcels have identical actual values and identical taxable values they are necessarily equalized.

In Exhibit 18 the Taxpayer also provided information concerning an apartment building at 2020 South 55th Street. That apartment building contains 17 units making it more similar to the two six unit apartment buildings on the parcel described in the appeal for Case No. 05C-014. The only evidence of the actual value and taxable value for the parcel at 2020 South 55th Street is on Exhibits 9 and 11. Both Exhibits show that the ratio of taxable value to actual value as indicated by a recent sale was 96.4 per cent for the parcel at 2020 South 55th Street. (E9:7 & E:18). The same Exhibits show that the ratio of taxable value to actual value as shown by a

recent sale of the parcel described in the appeal for Case No. 05C-014 was 96.2 per cent. The Taxpayer testified that the parcel at 2020 South 55th Street is not entirely comparable to the two six unit buildings on the parcel described in the appeal for Case No. 05C-014. The property was offered as a comparable and has a taxable to actual value ratio nearly identical to the protested parcel.

The Commission concludes that the Taxpayer has not shown that the taxable value of the two parcels comprising the subject property is not equalized after county Board action with like property.

**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 05-014

Land value	\$ 22,000.00
Improvement value	<u>\$ 429,000.00</u>
Total value	<u>\$ 451,000.00.</u>

Case No 05-015

Land value	\$ 11,100.00
Improvement value	<u>\$ 204,900.00</u>
Total value	<u>\$ 216,000.00.</u>

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 June 1, 2006.

Signed and Sealed. June 1, 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.