

**NEBRASKA TAX EQUALIZATION  
AND REVIEW COMMISSION**

ANTONIO MACIAS,	)	
	)	
Appellant,	)	CASE NO. 05R-040
	)	
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 Antonio Macias 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 March 23, 2006, pursuant to a Notice and Order for Hearing issued January 6, 2006. Commissioners Warnes, Lore, and Hans were present. Commissioner Warnes presided at the hearing.

Antonio Macias, ("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: Florence Field, Lot 5, Blk 35, S. 13 ft. LT 4 & all 47 x 119.38 - 13 x 119.58 , 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: Florence Field, Lot 5, Blk 35, S. 13 ft. LT 4 & all 47 x 119.38 - 13 x 119.58, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$5,200.00	—	\$5,200.00
Improvement	\$97,100.00	—	\$97,100.00
Total	\$102,300.00	\$69,000.00	\$102,300.00

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 6, 2006, set a hearing of the Taxpayer's appeal for March 23, 2006, at 1:00 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	\$ 5,200
Improvement value	<u>\$ 97,100</u>
Total value	<u>\$102,300.</u>

## II. CONCLUSIONS OF LAW

1. Subject matter jurisdiction of the Commission 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 and the subject matter of 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. "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**

This is an appeal involving a single family residence located in Omaha, Douglas County, Nebraska.

The property has been owned by Taxpayer, Antoino Macias, for the past 13 years. No improvements have been made to the home since his purchase. Mr. Macias testified that his neighborhood had experienced certain negative influences including vandalism, junk cars and broken sidewalks. He has kept his residence in excellent shape despite the deterioration of the neighborhood.

The Taxpayer stated that his primary reason for filing an appeal was that "... he was not considered for a fare (sic) total value tax ..." on his appeal to this Commission, ( See Appeal Form in Case File ). His concerns were aggravated by his belief that the County Assessor had

not been out to inspect his property. He believed that the last photo taken of his house by the Assessor's office was taken in 1997. (E 2:2). Upon inquiry by the Commission he stated that he had not called the Douglas County Assessor's office to discuss his 2005 valuation. He did not provide to the referee any support for his reduction request. (E 5:2). His property had not had a revaluation since 2001 when it was assessed at \$69,000.

Another concern of the Taxpayer was the use of property by the County for comparables that was located outside of his neighborhood. (E 2:4). The property in question is located at 7166 Minne Lusa Bd and is some one and one half miles away from his property. The Commission understands the Taxpayer's concern for the use of this property for a comparable, but on the other hand, the Taxpayer testified he thought this comparable most resembled his property.

Despite each of the concerns expressed above by the Taxpayer, he agreed that it was the valuation of his neighbor's property that was his primary reason for believing his valuation was too high. (E 1:1-2). The address of his neighbor's property is 6531 N 32nd St and is located almost directly across the street from his house. This property was assessed for 2005 in the amount of \$90,700 and has a gross living area of 1547 square feet. The subject property of Taxpayer has a total square footage of 1767 and was assessed \$102,300. If the two properties are adjusted for just the difference in finished square footage, the neighbor's property would assess at \$103,698. This increase is calculated by multiplying the extra 220 square feet of the neighbor's house by \$58.62/square foot ( \$90,700 divided by 1,547 square feet ) which equals \$12,898.

The Commission realizes that the above analysis is not perfect and that there should be

other adjustments made between the two properties. The analysis points out the difficulty of comparing properties unless accurate appraisal methods are used to choose the properties and make appropriate adjustments. The Taxpayer has not provided evidence to the Commission that proves the County was incorrect or that its decision was arbitrary or 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           \$ 5,200

Improvement value \$ 97,100

Total value           \$102,300.

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 March 24, 2006.

**Signed and Sealed.** March 24, 2006.

---

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.**