

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

JAMES A. WIDTFELDT,)	
)	
Appellant,)	Case No 05R-393
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE HOLT COUNTY
HOLT COUNTY BOARD OF)	BOARD OF EQUALIZATION
EQUALIZATION,)	DENYING MOTION FOR REFUND OF
)	FILING FEE
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by James A. Widtfeldt 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 July 13, 2006, pursuant to a Notice and Order for Hearing issued March 16, 2006, amended July 17, 2006.

Commissioners Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

James A. Widtfeldt, ("the Taxpayer") was present at the hearing without legal counsel.

The Holt County Board of Equalization ("the County Board") appeared through legal counsel, Thomas P. Herzog, County Attorney for Holt 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 OF FACT**

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described as North 120 feet Lot 7, and North 120 feet Lot 8, Block 8, Original Town O'Neill, Holt 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 Holt 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:

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Description: North 120 feet Lot 7, and North 120 feet Lot 8, Block 8, Original Town O'Neill, Holt County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 4,320.00	\$ 2,160.00	\$ 4,320.00
Improvement	\$35,545.00	\$17,771.50	\$35,545.00
Total	\$39,865.00	*\$19,932.50	\$39,865.00

*Mathematical total is \$19,931.50

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 16, 2006, amended July 17, 2006, set a hearing of the Taxpayer's appeal for October 13, 2006, at 9:00 a.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. Taxable value of the subject property for the tax year 2005 is:

Land value	\$ 4,320.00
Improvement value	<u>\$35,545.00</u>
Total value	<u>\$39,865.00.</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 a multi-family residential property.

The Taxpayer testified at length concerning factors which he believed affected actual value of the subject property. Among the factors cited by the Taxpayer were the Supreme Court of Nebraska, the courts in Holt County, World Trade Organization consideration of issues related to sugar and cotton, liability of manufacturers for chemicals used in production agriculture, policies of the United States carried out through the United States Department of Agriculture, past actions of the State of Nebraska regarding a low level nuclear waste dump, the municipal administrations in O'Neill and Atkinson, tax policy of the State of Nebraska, and the level of taxes in the State of Nebraska. The Taxpayer contended that the factors cited above and others required a reduction in value of the subject property for either locational or economic obsolescence.

Improvements on the subject property had been valued by the Assessor utilizing the cost approach. (E26:3). The cost approach is recognized as an acceptable method for the determination of actual value. Neb. Rev. Stat. §77-112 (Reissue 2003). 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. External obsolescence or the loss in value attributable to economic depreciation 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. Locational obsolescence is “a component of economic obsolescence; loss of value due to suboptimal siting of an improvement”. *Glossary of Property appraisal and Assessment*, International Association of Assessing Officers p. 80 (1997). The Taxpayer did not offer any evidence of the amount of impact the factors cited had on actual value of the subject property as determined by the Assessor, nor did he offer an opinion of value independent of the determination by the Assessor and County Board. The value proposed by the Taxpayer in his protest to the County Board is simply one-half of the value determined by the Assessor. There is no showing that a factor of 50% is an appropriate deduction for economic locational depreciation. The Taxpayer did not offer to the Commission, an opinion of taxable value for the subject property. The Commission cannot speculate to determine the impact of economic or locational depreciation on actual value of the subject property or actual value.

The Taxpayer testified at length concerning various tax foreclosures all of which occurred substantially prior to January 1, 2005. The Commission is unable to determine what impact if any tax foreclosures had on the actual value of the subject property as of January 1, 2005.

The Taxpayer also urged the Commission to declare that standards, criteria, and rules for the valuation of real property in Nebraska as contained in the Constitution of the State of Nebraska, and the laws of Nebraska as enacted by the Nebraska Legislature were invalid because they did not provide for reductions in actual value for regulatory burdens and his difficulties with the judges. The Commission has only the authority granted by statute as it hears appeals. *Creighton St. Joseph Regional Hosp. v. Nebraska Tax Equalization and Review Com'n*, 260 Neb. 750, 620 N.W.2d 451 (2000). A reading of the applicable statutes does not disclose authority to act as urged by the Taxpayer.

The Commission does not find any basis for determining that the decision of the County Board was unreasonable or arbitrary.

The Taxpayer moved for a refund of the filing fee because the hearing on the above captioned appeal was held simultaneously with the hearing on other appeals of the Taxpayer. The Commission is authorized to refund filing fees. Neb. Rev. Stat. §77-5015 (RR2003). A refund can be granted if appeals are consolidated. *Id.* Consolidation is at the discretion of the Commission. *Id.* The Commission has adopted rules and regulations to proscribe the circumstances in which a refund of a filing fee may occur. 442 Neb. Admin. Code, ch 5 §31 (01/05). The appeal in the above captioned case does not meet the criteria found in the Commission's rules and regulations.

**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 decision of the County Board is unreasonable or arbitrary, and the decision of the County Board should be affirmed.

**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	\$ 4,320.00
Improvement value	<u>\$35,545.00</u>
Total value	<u>\$39,865.00.</u>
3. The motion for refund of filing fee is denied.

- 4 This decision, if no appeal is timely filed, shall be certified to the Holt County Treasurer, and the Holt County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Supp. 2005).
5. Any request for relief, by any party, which is not specifically provided for by this order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This decision shall only be applicable to tax year 2005.
8. This order is effective for purposes of appeal October 17, 2006.

Signed and Sealed. October 17, 2006.

Wm. R. Wickersham, Commissioner

Susan S. Lore, Commissioner

Robert L. Hans, 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.