

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

JOY L. KOKES,)	
)	
Appellant,)	Case No 06R-504
)	
v.)	DECISION AND ORDER REVERSING
)	THE DECISION OF THE LANCASTER
LANCASTER COUNTY BOARD OF)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,)	AND
)	GRANTING MOTION FOR COSTS
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Joy L. Kokes ("the Taxpayer") 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 25, 2007, pursuant to an Order for Hearing and Notice of Hearing issued February 27, 2007. Commissioners Warnes, Lore, and Sorensen were present. Commissioner Warnes presided at the hearing.

Joy L. Kokes, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Michael E. Thew, a Deputy County Attorney for Lancaster County, Nebraska, appeared as legal counsel for the Lancaster County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006) 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.
ISSUES**

The Taxpayer has asserted that actual value of the subject property as of January 1, 2006, is less than actual value as determined by the County Board. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining actual value of the subject property was unreasonable or arbitrary?

What was actual value of the subject property on January 1, 2006?

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2006, is not equalized with the taxable value of other real property. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining taxable value of the subject property was unreasonable or arbitrary?

Whether taxable value of the subject property was determined by the County Board in a manner and an amount that is uniform and proportionate as required by Nebraska's Constitution in Article VIII §1?

What was the equalized taxable value of the subject property on January 1, 2006?

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above captioned appeal to maintain the appeal.

- 2. The parcel of real property described below is the "subject property".
- 3. Actual value of the subject property placed on the assessment roll as of January 1, 2006, ("the assessment date") by the Lancaster County Assessor, value as proposed in a timely protest, and actual value as determined by the County Board is shown in the following table:

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Description: SEVEN OAKS 1ST ADDITION, BLOCK 1, LOT 20 LINCOLN, LANCASTER COUNTY, NE , Lancaster County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$45,000.00	\$40,500.00	\$
Improvement	\$112,999.00	\$88,743.00	\$
Total	\$157,999.00	\$129,243.00	\$157,999.00

- 4. An appeal of the County Board's decision was filed with the Commission.
- 5. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
- 6. An Order for Hearing and Notice of Hearing issued on February 27, 2007, set a hearing of the appeal for May 25, 2007, 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. The County Board made a Motion for Costs to be assessed to the Taxpayer should the Taxpayer fail to recover more than the amount offered by the County in it's offer to Confess Judgment made on April 13, 2007, and approved by the Commission.

9. Actual value of the subject property as of the assessment date for the tax year 2006 is:

Total value \$142,438.00.

**III.
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in this appeal is over 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. “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).
3. 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).

4. 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).
5. “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).
6. 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).
7. 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. 2006).
8. “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. Const.*, art. VIII, §1
9. Equalization to obtain proportionate valuation 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).
10. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity. *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

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. In the evaluation of real property for tax purposes, where buildings and improvements are taxable as a part of the real estate, the critical issue is the actual value of the entire property, not the proportion of that value which is allocated to the land or to the buildings and improvements by the appraiser. *Bumgarner v. Valley County*, 208 Neb. 361, 303 N.W.2d 307 (1981).
14. 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).
15. 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).

16. 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)
17. The Commission can grant relief only if there is clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See. *Omaha County Club v Douglas County Board of Equalization et al*, 11 Neb. App. 171 (2002), Neb. Rev. Stat. §77-5016 (8) (Supp. 2005).
18. "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).
19. 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).
20. 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).
21. "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).

22. The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998).
23. A Taxpayer, who only produced evidence that was aimed at discrediting valuation methods utilized by county assessor, failed to meet burden of proving that value of her property was not fairly and proportionately equalized or that valuation placed upon her property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).
24. Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981).
25. “The board may, with approval of the Tax Equalization and Review Commission, offer to confess judgment for part of the value claimed or part of the causes involved in the action.” Neb. Rev. Stat. §77-1510.01 (Cum. Supp. 2006).
26. “If (1) the appellant is present and refuses to accept such confession of judgment in full of the appellant’s demands against the board in such action or the appellant fails to attend having had reasonable notice that the offer would be made, its terms, and the time of making it and (2) at hearing the appellant does not obtain more relief than was offered to be confessed, the appellant shall pay all of the costs and fees the board incurred after making the offer.” Neb. Rev. Stat. §77-1510.01 (Cum. Supp. 2006)

IV. ANALYSIS

This is an appeal of both the assessed valuation and equalization of the subject property with the taxable value of other real property.

The subject property is classified as residential. It was purchased by the Taxpayer on July 10, 1997, for \$119,000.00. There have been minimum improvements to the subject property since its purchase. On September 10, 2001, the Taxpayer took out a building permit for \$7,400 to add a gazebo to the deck area of the house. (Exhibit 19:2) No other improvements have been made to the subject property.

The residence on the subject property was built in 1984 and has 1,163 square feet of total living area. The residence is a multi-level style house with an attached two car garage.

a. VALUATION ISSUE (COUNTY)

The subject property was inspected by the County Assessor on August 23, 2006, after the filing of a protest by the Taxpayer. (Exhibit 19:2). Upon inspection, the County Assessor made corrections to the property record file for the subject property. These corrections were testified to by the Senior Residential County Appraiser, Cyrill "Bob" Kovar. The corrections are reflected on Exhibit 19:2. The property record file for the subject property before the corrections are shown on Exhibit 6:9 to 6:12. The actual corrections made by the appraiser (see Exhibit 6:10) resulted in a decrease of assessed valuation from \$157,999 to \$142,438. The changes included a change to the CDU (Condition, Desirability and Utility) from Good to Average (4) based on no "updating" to the improvements such as carpeting, kitchen or cabinetry. Other corrections included a decrease in the square footage of the total basement

area from 1,188 square feet to 766 square feet and a decrease in the square footage of the partition finished area of the basement from 600 to 400 square feet. These three corrections alone accounted for a significant reduction in the assessed valuation of the subject property.

Other corrections made by the appraiser which resulted in a decrease in the assessed valuation of the subject property were to the residential components. These corrections included item number 133, Veneer, Masonry, changed from 25 % to 22% . (Exhibit 6:10) Also, item number 219, Wood Shake, was changed to code 209, asphalt shingles. The wood deck size, code 903, was reduced from 292 to 155 square feet.(Exhibit 6:10) These additional corrections resulted in a further reduction of the assessed valuation of the subject property. The Commission notes that the Taxpayer brought the error of the basement size to the attention of the appraiser first by a telephone call and then upon inspection. The above corrections have now been made to the property record file for the subject property. The reduction in assessed valuation for tax year 2006 could not be made by the County Assessor after March 19, 2006, but would take effect for valuation for 2007.

The testimony of the County's Senior Residential Appraiser was that his opinion of the valuation of the subject property as of January 1, 2006, was \$142,438.

The testimony of the County's Appraisal Supervisor, Michele Slack, confirmed that the assessed valuation for the subject property as of January 1, 2006, was \$142,438. This valuation was a reduction to the protested valuation of \$157,999, and was the direct result of the corrections made in the initial valuation.

Both the County's Appraisal Supervisor and the County's Senior Residential Appraiser testified that the comparables used by the County, Exhibit 19:1, were computer generated after

the corrections were made and inputted into the County's property record files. The factors that were given the most weight by the computer program were the style of the house, multi level, the total living area, age, condition and quality.(Exhibit 19:1 and 19:2-3)

b.
VALUATION ISSUE (TAXPAYER)

The testimony of the Taxpayer was that she valued the subject property as of January 1, 2006, at \$136,000. This valuation amount is reflected in the letter she attached to her appeal to the Commission, which was received into evidence with the admission of the case file. Other valuation amounts given by the Taxpayer for the subject property as of January 1, 2006, included \$140,000 as the last value to which she testified, \$144,060 as shown on Exhibit 7:3, and \$133,743 shown on Exhibit 5:5.

The evidence provided by the Taxpayer for comparable properties is shown on the Table she created, Exhibit 5:7, and the accompanying letter, Exhibits 5:8 to 5:9. There are at least three deficiencies with the analysis by the Taxpayer. First, she did not provide the property record files for the comparables offered, but used the information she derived from a personal computer search. This method prevents the Commission from examining each comparable and comparing it to the subject property.

Second, the Taxpayer testified that she did not include residential components category (i.e. swimming pool, deck, porch, etc) for each of the comparable properties.

The third deficiency noted by the Commission is that the Taxpayer has used the assessed valuations of other properties as compared to the subject property in order to determine assessed valuation for the subject property. This process of comparison is not an

accepted valuation method. The problem comes from the inconsistency of arguing that the assessment of the subject property is incorrect, but the assessed valuation of all other properties is correct.

The Taxpayer presented evidence of the taxable “assessed” value of various parcels, one of which was the subject property. The Taxpayer contends that the actual or fair market value of the subject property should be determined based on the taxable or “assessed” value per square foot of the other parcels. A Taxpayer wishing to use taxable “assessed” values to prove actual or fair market value must show that the approach is a professionally approved mass or fee appraisal approach; appropriate application of the approach and reliability of the evidence.

A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes. Neb. Rev. Stat. §77-112 (Reissue 2003). The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods. *Id.* Comparison of assessed values is not identified in the Nebraska Statutes as an accepted approach for a determination of actual value for purposes of mass appraisal. *Id.* Because the method is not identified in statute, proof of its professional acceptance as an appraisal approach would have to be produced. *Id.* No evidence has been presented to the Commission that comparison of assessed values is a professionally accepted mass or fee appraisal approach.

c.
EQUALIZATION

The Taxpayer did not provide evidence of value of other properties in order for the Commission to compare the assessed valuations to the actual or market values for each property

and in turn compare those ratios to the subject property. Also, the Taxpayer did not provide the assessed valuations of comparable properties to the subject property. The Commission is without sufficient evidence to grant relief based upon an equalization issue.

d.
SUMMARY

The Commission finds that the decision of the Lancaster County Board of Equalization was unreasonable or arbitrary and finds that the assessed valuation of the subject property for 2006 is \$142,438.

e.
CONFESSION OF JUDGEMENT

At the start of this appeal hearing the Commission received into evidence the County's filed Confession of Judgement for the limited purpose of showing that an Offer had been made by the County to the Taxpayer. At the conclusion of the hearing on the Merits of the Appeal the County Board made a Motion for costs incurred after the confession of judgment to be taxed to the Taxpayer pursuant to Neb. Rev. Stat. §77-1510.01 (Cum. Supp. 2006), should the Taxpayer fail to recover greater relief than was offered by the County. The Commission issued an Order to Clarify and Submit Costs requiring the County Board to certify and file a list of costs incurred in the above captioned case from April 13, 2007. The County Board submitted a Certification of Costs in the amount of \$156.25, accompanied by an affidavit and list of costs. The Taxpayer did not file a response or objection to the Certification of cost as allowed by the Commission's Order to Clarify and Submit Costs. The Taxpayer has failed to obtain greater relief than was offered to be confessed by the County and therefore shall be taxed the costs

incurred by the County Board after the filing of the Offer to Confess judgment as set forth in the Certification of Costs submitted by the County Board without objection.

**V.
CONCLUSIONS OF LAW**

1. The Commission has subject matter jurisdiction in this appeal.
2. The Commission has jurisdiction over the parties to this appeal.
3. The Taxpayer has 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 reversed.
4. The Taxpayer has failed to obtain relief greater than was offered to be confessed by the County Board and shall therefore pay all the costs and fees the County Board incurred after making the offer.

**VI.
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, 2006, is reversed.
2. Actual value of the subject property for the tax year 2006 is:

Total value	<u>\$142,438.00.</u>
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3. This decision, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer, and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).

4. Within thirty (30) days of the date of this decision the Taxpayer shall make payment in the amount of \$156.25 to the Tax Equalization and Review Commission, for the costs incurred by the County Board after the Offer to Confess Judgment was made.
5. Any request for relief, by any party, which is not specifically provided for by this order is denied.
6. This decision shall only be applicable to tax year 2006.
7. This order is effective for purposes of appeal on June 22, 2007.

Signed and Sealed. June 22, 2007.

Susan S. Lore, Commissioner

Ruth A. Sorensen, 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 (CUM. SUPP. 2006). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.