

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

RALPH A. RIEDEL,)	
)	
Appellant,)	Case No 06R-059
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE CASS COUNTY
CASS COUNTY BOARD OF)	BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Ralph A. Riedel ("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 March 22, 2007, pursuant to an Order for Hearing and Notice of Hearing issued January 10, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Ralph A. Riedel, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Nathan B. Cox, County Attorney for Cass County, Nebraska, appeared as legal counsel for the Cass 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:

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

What was actual 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 Cass 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: Lot 17 Golden Hill, Cass County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 36,225.00	\$27,750.00	\$ 36,225.00
Improvement	\$ 64,139.00	\$50,000.00	\$ 64,139.00
Total	\$100,634.00	\$77,750.00	\$100,364.00

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 January 10, 2006, set a hearing of the appeal for March 22, 2007, at 11:00 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. Actual value of the subject property as of the assessment date for the tax year 2006 is:

Land value	\$ 36,225.00
Improvement value	\$ <u>64,139.00</u>
Total value	<u>\$100,364.00.</u>

**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. 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).
9. 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).
10. 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)
11. 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. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005).

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

IV. ANALYSIS

The subject property is an improved residential parcel of 2.75 acres. (E18:1). Improvements on the parcel are a one story, one bedroom, 1,027 square foot residence with a 175 square foot basement built in 2001. (E18:1). There are two sheds on the parcel, a carport and a concrete drive. (E18:2).

The Taxpayer testified that the taxable value of the subject property for tax year 2006 had increased 14.3% over the taxable value for tax year 2005. A prior year's taxable valuation is not relevant to a determination of taxable valuation in a subsequent year. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop v. Madison Co. Bd. Of*

Equal., 229 Neb. 605, 613, 428 N.W.2d 201,206 (1988). It follows that a percentage increase calculated on a value that is not relevant is likewise not relevant.

The Taxpayer did not offer any evidence in support of the value requested on the protest form or any other value. The Taxpayer testified that he did not believe that the land component of the subject property 2.75 acres should not have a value of \$36,225 when a 3 acre parcel was valued at \$32,000.00 (E18:1 and E21:6). The subject property is in neighborhood 1004.

(18:1). The comparison parcel is in neighborhood 58. (E21:1). Market factors affecting the value of real estate in neighborhood 58 were not produced. In 2002, 4 undeveloped lots in the Golden Hill subdivision sold for more than \$13,656.00 per acre. (E20:1). The subject property land component was valued at \$13,172.73 per acre. (E18:1). There is no evidence of a decline in the value of residential real property in Cass County between the years 2002 and 2006.

The Taxpayer contends that larger homes with a higher aggregate value have received a lesser value per square foot than the subject property. The incremental cost of each square foot of structure declines as the size of the structure grows. *Marshall and Swift Residential Cost Handbook.*, pg Fair-13 (2006). The result is higher per square foot costs for a smaller structure that is identical in all other respects to a larger structure.

Quantifiable evidence of value was not presented by the Taxpayer. The Commission is unable to grant relief on this appeal.

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 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.

**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 affirmed.
2. Actual value of the subject property for the tax year 2006 is:

Land value	\$ 36,225.00
Improvement value	<u>\$ 64,139.00</u>
Total value	<u>\$100,364.00.</u>
3. This decision, if no appeal is timely filed, shall be certified to the Cass County Treasurer, and the Cass County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).
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 2006.

7. This order is effective for purposes of appeal March 23, 2007.

Signed and Sealed. March 23, 2007.

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