

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

HOWARD W. JORDAN,)	
)	
Appellant,)	Case No 06R-144
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE GAGE
GAGE 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 Howard W. Jordan ("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 February 23, 2007, pursuant to an Order for Hearing and Notice of Hearing issued December 18, 2006. Commissioners Wickersham, Warnes, and Hans were present. Commissioner Wickersham presided at the hearing.

Howard W. Jordan, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Randall Ritnour, County Attorney for Gage County, Nebraska, appeared as legal counsel for the Gage 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 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:

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

Was taxable value of the subject property 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 Gage 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 2, Block 9 Lambs Subdivision, Beatrice, Gage County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 8,000.00	\$ 8,000.00	\$ 8,000.00
Improvement	\$46,105.00	\$35,000.00	\$46,105.00
Total	\$54,105.00	\$43,000.00	\$54,105.00

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 December 18, 2006, set a hearing of the appeal for February 23, 2007, at 9:00 a.m. CST.
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	\$ 8,000.00
Improvement value	<u>\$46,105.00</u>
Total value	<u>\$54,105.00.</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. “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. 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).
14. 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).
15. 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)
16. 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).
17. "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).

18. 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).
19. 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).

IV. ANALYSIS

The subject property is a residential parcel. The residence built in 1900 was remodeled in 2002. (E2:26). The residence is 1½ stories with 922 square feet and a 448 square foot basement. (E2:26). There is a 240 square foot detached garage. (E2:26). For purposes of assessment, the residence was rated as being of average + quality and average condition. Physical depreciation assigned to the subject property was 44%.

The Taxpayer alleged that the subject property was not equalized in its taxable value with other comparable properties. The Taxpayer testified that he relied principally on the assessment of the parcel described in Exhibit 9 for that conclusion. The parcel described in Exhibit 9 is a residential parcel. The residence was built in 1915. It has not been remodeled. The residence described in Exhibit 9 contains is 1½ stories with 858 square feet and a 360 square foot basement. Like the subject property the parcel described in Exhibit 9 has a 240 square foot detached garage. For purposes of assessment the residence described in Exhibit 9 was rated as average quality and average + condition. Physical depreciation assigned to the parcel described in Exhibit 9 was 63%.

Equalization requires a comparison of the ratio of assessed value to actual value for the subject property with the ratio of assessed value to actual value of a comparable property.

Cabela's Inc. v. Cheyenne County Bd. of Equalization, 8 Neb.App. 582, 597 N.W.2d 623, (1999). “Comparable properties” share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 98. While there are elements of comparability between the subject property and the property described in Exhibit 9 there are also significant differences such as the 2002 remodel of the subject property and the quality rating of the subject property when compared to the parcel described in Exhibit 9. The Commission concludes that the subject property and the parcel described in Exhibit 9 are not comparable.

Even if the Commission had concluded that the subject property and parcel described in Exhibit 9 were comparable, there is no evidence of that actual value of either parcel that is different than assessed value as determined by the County Board. It is true they have different taxable values but those difference are explainable with reference to differences in the two parcels and do not support a claim that taxable values are not equalized when compared to actual value of each parcel. The conclusion from the evidence has to be that both are assessed at 100% of actual value and they are therefore equalized in their taxation.

A note on Exhibit 2 at page 27 captioned “HOWARD JORDAN EQUALIZATION STUDY” implies that an error was made in the description for assessment of the heating and cooling available in the residence on the subject property and that a shed was added. The Taxpayer testified that the subject property does not have separate heating and cooling systems

as shown in Exhibit 2 at page 29. The Taxpayer testified that the heating system for the residence on the subject property did have a firebox for burning wood. No one responsible for the preparation of Exhibit 2 explained the note on page 27 or how the revised IMP VALUE was determined or how it affected equalization. The IMP VALUE is \$845 less than the assessed value of the subject property. Exhibit 2 was submitted by the County Board as evidence. A reasonable inference is that a responsible person reviewed the assessment information for the subject property and determined that the assessed value of the subject property could be \$845 less than as determined by the County Board. The implication is that actual value of the subject property is less than assessed value and the ratio of assessed value to actual value is greater than 1. An unexplained note is not however a sufficient basis on which to grant relief.

**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	\$ 8,000.00
Improvement value	<u>\$46,105.00</u>
Total value	<u><u>\$54,105.00.</u></u>
3. This decision, if no appeal is timely filed, shall be certified to the Gage County Treasurer, and the Gage 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 7, 2007.

Signed and Sealed. March 7, 2007.

Wm. R. Wickersham, 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.