

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

JEFF W. HAYES,)	
)	
Appellant,)	Case No 06R-413
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE HALL
HALL 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 Jeff W. Hayes ("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 20, 2007, pursuant to an Order for Hearing and Notice of Hearing issued January 16, 2007. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

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

Michelle J. Oldham, a Deputy County Attorney for Hall County, Nebraska, appeared as legal counsel for the Hall 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 Hall 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 7, Marylane Subdivision, Grand Island, Hall County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 20,100.00	\$ 20,100.00	\$ 20,100.00
Improvement	\$135,349.00	\$ 80,616.00	\$135,349.00
Total	\$155,449.00	\$100,716.00	\$155,449.00

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 16, 2007, set a hearing of the appeal for March 20, 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. Actual value of the subject property as of the assessment date for the tax year 2006 is:

Land value	\$ 20,100.00
Improvement value	<u>\$135,349.00</u>
Total value	<u>\$155,449.00.</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 in Grand Island Nebraska. The improvements are a 1,526 square foot ranch style residence, an attached garage and a full basement built in 1979 and a 1,380 square foot detached garage built in 2005. (E17:42).

The Taxpayer contends that actual value of the subject property was improperly determined because too much value was attributed to the new garage and that actual value should reflect the effects of groundwater contamination.

The new garage was built in 2005. Materials for construction of the garage cost more than \$12,000.00. The Taxpayer performed all labor for construction of the garage. The Taxpayer testified that the garage contributed \$6,000.00 to the value of the subject property. The Taxpayer's estimate of contributory value was not supported by the evidence before the Commission.

The Taxpayer testified that the subject property is within a superfund site. The designation as a superfund site resulted from the discovery of two chemicals in the groundwater beneath the subject property in 2003. The chemicals are released when the groundwater is exposed to air. Discovery of the chemicals caused abandonment of the private wells that had provided household water in the Marylane subdivision. All parcels in the Marylane subdivision were connected to the water supply for the City of Grand Island in 2004.

The Taxpayer testified that he believed the actual value of the subject property as of January 1, 2006 was about \$108,000 ($\$66.85 \times 1526 \text{ square feet} + \$6,000 = \$102,013$). The Taxpayer derived that estimate of value from the assessment of a neighboring property with \$6,000.00 added for the contribution to value of the new garage.

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 one of those parcels. A Taxpayer wishing to use taxable "assessed" values to prove actual or fair market value has three tests to meet: proof that the method is a professionally approved mass or fee appraisal approach; appropriate application of the approach; and reliability of the evidence.

Methods through which a determination of actual value may be made for mass appraisal and assessment purposes are identified in Nebraska Statutes and include the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods. Neb. Rev. Stat. §77-112 (Reissue 2003). A 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 that of its acceptance as an appraisal method 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.

In the sales comparison approach, a sale price is an indication of actual value for a sold property but has to be adjusted to account for differences between properties to become an indicator of market value for another property. *The Appraisal of Real Estate*, Twelfth Edition, Appraisal Institute, Chs 17, 18, 19, (2001). If the “taxable ‘assessed’ value comparison approach” was shown to be a professionally accepted method of appraisal, an analysis of differences and adjustments to the taxable “assessed” value of comparison properties would be necessary to obtain an indication of value for a subject property. No adjustments or analysis of adjustments necessary to compensate for differences between the subject property and the taxable “assessed” values of other parcels was presented.

Implicit in the Taxpayer's desire to use the assessed value of another parcel to indicate actual value of the subject property is an assumption that all parcels, except for the subject property, were assessed correctly. The Commission is unable to make that assumption.

The Taxpayer contends that the facts concerning the chemicals and the attendant publicity have adversely affected the value of the subject property. An appraiser for the County Board testified that upon examination of sales shown in Exhibit 32, that he did not believe that an adjustment should be made for groundwater contamination.

The question presented by the Taxpayer is whether inclusion of the subject property in a superfund site due to groundwater contamination detracted from its taxable value. An instinctive response is that a negative impact would occur. Stigma or the impact of ground water contamination of market value of the subject property could be shown by appraisals or sales conducted before and after contamination was discovered. In this case, however, an appraiser testified that a negative impact was not shown in sales of parcels near the subject property. The Commission is unable 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	\$ 20,100.00
Improvement value	<u>\$135,349.00</u>
Total value	<u><u>\$155,449.00.</u></u>
3. This decision, if no appeal is timely filed, shall be certified to the Hall County Treasurer, and the Hall 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 22, 2007.

Signed and Sealed. March 22, 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.