

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

CHARLES D. BROWN,)	
)	
Appellant,)	Case No 06R-166
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE DOUGLAS
DOUGLAS 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 Charles D. Brown ("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 October 26, 2007, pursuant to an Order for Hearing and Notice of Hearing issued July 30, 2007. Commissioners Wickersham, Warnes, and Hotz were present. Commissioner Warnes presided at the hearing.

Glenda L. Brown, wife of Charles D. Brown, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Thomas Barrett, a Deputy County Attorney for Douglas County, Nebraska, appeared as legal counsel for the Douglas 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:

Whether the decision of the County Board determining the equalized taxable value of the subject property is unreasonable or arbitrary;

Whether the equalized 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; and

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 to which this appeal pertains is described in the table below ("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 Douglas County Assessor, value as proposed in a timely protest, and actual value as determined by the County Board is shown in the following table:

Case No.

Description: COLONIES REPLAT VI THE LOT 8 BLOCK 0 IRREG, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 12,300.00	\$Included in Total	\$ 12,300.00
Improvement	\$164,000.00	\$Included in Total	\$155,700.00
Total	\$176,300.00	\$150,800.00	\$168,000.00

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 July 30, 2007, set a hearing of the appeal for October 26, 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 equalized taxable and actual value of the subject property as of the assessment date for the tax year 2006 is:

Land value	\$ 12,300.00
Improvement value	<u>\$155,700.00</u>
Total value	<u>\$168,000.00.</u>

**III.
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in this appeal is over all questions necessary to determine taxable value. 2007 Neb. Laws, LB 167 §6.

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 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. If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgement. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity. *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).
15. 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).
16. 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).
17. 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).

18. 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 (8) (Cum. Supp. 2006), and e.g. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
19. "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).
20. 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).
21. 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).
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

property was not fairly and proportionately equalized or that valuation placed upon 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).

IV. ANALYSIS

The Taxpayer presents to the Commission the issue of whether the taxable value of the subject property was equalized with other comparable properties for 2006.

The subject property has improvements which include a 1,416 square foot residence built in 1997. Exhibit 10:4. The residence is a ranch in style and is of average quality. Exhibit 10:4. The condition of the residence had been rated as very good. Exhibit 10:4.

The Taxpayer testified that she did not object to the subject property being rated as very good condition, but she alleged that the other parcels she alleges are comparable parcels are also of very good condition, yet they have been rated as average.

The Taxpayer testified that those parcels that are alleged to be comparable to the subject property are located at 4260 S. 154th Street and at 14949 Dayton Street. She testified that she had been in both houses, but had not been in the basement of either. The Taxpayer testified that she did not make any adjustments for size or other attributes that might add or reduce taxable value of the parcels she claimed were comparable to the subject property. There were no property record files provided by the Taxpayer as evidence in support of her claim that these parcels were in fact comparable to the subject property and that their assessment provided evidence of unequalized treatment in determination of their taxable value. The Taxpayer did

not provide evidence of actual value for any parcels including her own property from which an analysis of proportionality could be performed.

The Taxpayer testified that it was her belief that the determination of taxable value of the subject property was influenced by its recent purchase. She believes that other homes which were sold in the recent past have a greater chance of being assessed higher than those that were purchased when the subdivision was established some 10 - 11 years ago. The subject property was purchased by the Taxpayer on August 10, 2004, for \$175,000. It was assessed in 2006 for \$168,000. The Taxpayer did not provide evidence of any sales or property record files in support of this theory.

The Commission does not find that the Taxpayer has provided sufficient evidence 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 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. Equalized taxable and actual value of the subject property for the tax year 2006 is:

Land value	\$ 12,300.00
Improvement value	<u>\$155,700.00</u>
Total value	<u><u>\$168,000.00.</u></u>
3. This decision, if no appeal is timely filed, shall be certified to the Douglas County Treasurer, and the Douglas 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 on November 6, 2007.

Signed and Sealed. November 6, 2007.

Wm. R. Wickersham, Commissioner

Robert W. Hotz, Commissioner

William C. Warnes, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.