

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

PETRA R. LADD,	)	
	)	
Appellant,	)	Case No. 07C-059
	)	
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 Petra R. Ladd ("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 April 4, 2008, pursuant to an Order for Hearing and Notice of Hearing issued January 8, 2008. Commissioners Wickersham, Warnes, and Salmon were present. Commissioner Hotz was excused from participation by the presiding hearing officer. The appeal was heard by a panel of three commissioners pursuant to 442 Neb. Admin. Code, ch. 4, §11 (10/07). Commissioner Wickersham was the presiding hearing officer.

Petra R. Ladd was present at the hearing with Todd C. Schicker as legal counsel.

Thomas S. Barrett, a Deputy County Attorney for Douglas County, Nebraska, was present 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 to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-

5018 (Cum. Supp. 2006). 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, 2007, 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 is unreasonable or arbitrary; and

The actual value of the subject property on January 1, 2007.

## **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 as Lot 3, Block 9 E 140 ft 50 X 140, Hanscom Place, Omaha, Douglas County, Nebraska, ("the subject property").
3. Actual value of the subject property placed on the assessment roll as of January 1, 2007, ("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:

Description: Lot 3, Block 9 E 140ft 50 X 140, Hanscom Place, Omaha, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$5,700.00	\$In Total	\$5,700.00
Improvement	\$138,300.00	\$In Total	\$138,300.00
Total	\$144,000.00	\$77,700.00	\$144,000.00

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. The Taxpayer was served with a Notice in Lieu of Summons and duly answered that Notice.
7. An Order for Hearing and Notice of Hearing issued on January 8, 2008, as amended by an Order issued on January 8, 2008, set a hearing of the appeal for April 4, 2008, at 9:00 a.m. CDST.
8. 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.
9. Actual value of the subject property as of the assessment date for the tax year 2007 is:

Land value	\$ 5,700.00
Improvement value	<u>\$138,300.00</u>
Total value	<u>\$144,000.00.</u>

### III. APPLICABLE LAW

1. Subject matter jurisdiction of the Commission in this appeal is over all questions necessary to determine taxable value. Neb. Rev. Stat. 77-5016 (7) (Supp. 2007).
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. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *City of York v. York County Bd. Of Equalization*, 266 Neb. 297, 64 N.W.2d 445 (2003).
9. 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).
10. The presumption disappears if there is competent evidence to the contrary. *Id.*
11. The Commission can grant relief only if the action of the County Board was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2006),
12. Proof that the action of the County Board was unreasonable or arbitrary must be made by clear and convincing evidence. See, e.g. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).

13. "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).
14. 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).
15. 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).
16. "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).
17. 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, 580 N.W.2d 561 (1998).
18. 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).
19. Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. Cf, *Lincoln Tel. and*

*Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981); *Arenson v. Cedar County*, 212 Neb. 62, 321 N.W.2d 427 (1982) (determination of equalized values); and *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value).

#### **IV. ANALYSIS**

The subject property is an improved residential parcel. At the time the subject property was valued by the County Board the County Assessor's records showed that the residence (apartment house) on the subject property contained 2,439 square feet without any finished basement. (E3:21). An inspection of the subject property by an appraiser for the Douglas County Assessor's office found an additional 296 square feet of livable above ground space and 500 square feet of finished basement. Records presented to the Commission show that the residence on the subject property contains 2,735 square feet with a 1,541 square foot basement, 500 square feet of which are finished as of the assessment date. (E3:1). The residence was constructed in 1890 and remodeled in 1990. (E3:1). At some time the single family residence was converted to a four unit apartment house. (E3:1).

An Assessor Report received as Exhibit 2 shows information concerning three parcels the County Board deemed comparable to the subject property. The Taxpayer argued that if the average sale price per unit, (apartment) of those parcels was considered it showed the subject property to be overvalued. An appraiser testifying on behalf of the Taxpayer advised that consideration of the income to be derived from the subject property was more appropriate and that investors would not consider a per unit, apartment, value.

An appraiser for the Taxpayer testified that actual value of the subject property based on the use of a gross rent multiplier was \$123,036. A gross rent multiplier is a factor derived from sales of rented parcels based on the sale price and the gross rents being obtained at the time of sale. *The Appraisal of Real Estate* 12<sup>th</sup> Edition, The Appraisal Institute, 2001, pp. 546-547. The gross rent multiplier derived by the appraiser was 65.65. The rents to which the multiplier was applied were \$2,050 per month. The value derived from application of those factors is \$134,582.50 ( $\$2,050 \times 65.65 = \$134,582.00$ ). There is no evidence that the rents used by the Taxpayer's appraiser were rents being obtained from the subject property as of January 1, 2007 the assessment date, or that the gross rent multiplier used was determined as of January 1, 2007. There is no evidence that the effective date of the appraisal by the Taxpayer's appraiser was the assessment date.

The Taxpayer testified that the subject property needed various repairs, that credit worthy tenants could not be found for the subject property and that rents could not be raised. The Taxpayer's manager testified that the subject property is in a high crime area. The Taxpayer testified that fair market value of the subject property as of the assessment date was \$85,000. The Taxpayer testified that \$85,000 was all she would pay for the subject property. The Taxpayer did not offer any evidence in support of her opinion of value.

The Taxpayer's property manager testified that the area in which the subject property is located is a high crime area with depressed rents. The Taxpayer's property manager also testified that credit worthy tenants could not be found for the subject property. Factors such a crime in the neighborhood, depressed rents and lack of credit worthy tenants are factors which could affect the value of a parcel used for residential rental purposes but it is necessary to do more than



identify factors. The effect of the factors as described must be expressed as elements of an opinion of value or qualified and deducted from a value determined without consideration of those factors. It is the second step which the Taxpayer has not presented.

The Commission finds that the determination of the County Board was not unreasonable or arbitrary.

**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 actual value of the subject property as of the assessment date, January 1, 2007, is affirmed.
2. Actual value, for the tax year 2007, of the subject property is:

Land value	\$ 5,700.00
Improvement value	<u>\$138,300.00</u>
Total value	<u><u>\$144,000.00.</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 2007.
7. This order is effective for purposes of appeal on March 24, 2008.

**Signed and Sealed.** March 24, 2008.

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Wm. R. Wickersham, Commissioner

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Nancy J. Salmon, Commissioner

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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.**