

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

JEFF W. DEBOER,)	
)	
Appellant,)	Case No. 07A-084
)	
v.)	DECISION AND ORDER REVERSING
)	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 Jeff W. DeBoer ("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 3, 2008, pursuant to an Order for Hearing and Notice of Hearing issued January 15, 2008. Commissioners Warnes, Salmon, and Hotz were present. Commissioner Wickersham 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 Warnes was the presiding hearing officer.

Jeff W. DeBoer was present at the hearing without legal counsel.

Randall R. Ritnour, County Attorney for Gage County, Nebraska, was present 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 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 taxable value of the subject property as of January 1, 2007, is less than taxable value as determined by the County Board. The issues on appeal related to that assertion are:

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

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

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2007, 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, 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 SEC 1-6-6 NW 160.00 AC, Gage County, Nebraska, ("the subject property").
3. Taxable value of the subject property placed on the assessment roll as of January 1, 2007, ("the assessment date") by the Gage County Assessor, value as proposed in a timely protest, and taxable value as determined by the County Board is shown in the following table:

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Description: SEC 1-6-6 NW 160.00 AC, Gage County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$249,845.00	\$249,845.00	\$249,845.00
Home Site	\$	\$	\$
Residence	\$	\$	\$
Farm Site	\$	\$	\$
Outbuilding	\$133,770.00	\$74,663.00	\$133,770.00
Total	\$383,615.00	\$324,508.00	\$383,615.00

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 15, 2008, set a hearing of the appeal for April 3, 2008, at 11:00 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. Taxable value of the subject property as of the assessment date for the tax year 2007 is:

Agricultural land	\$249,845.00
Outbuildings	<u>\$105,200.00</u>
Total	<u><u>\$355,045.00.</u></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. Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Cum. Supp. 2006).
9. Agricultural land and horticultural land means a parcel of land which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure." Neb. Rev. Stat. §77-1359 (1) (Cum. Supp. 2006).

10. "Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture. Agricultural or horticultural purposes includes the following uses of land:
 - (a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and
 - (b) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land." Neb. Rev. Stat. §77-1359 (2) (Cum. Supp. 2006).
11. "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.
12. 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).
13. 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).

14. 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).
15. 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).
16. 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).
17. 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).
18. 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).

19. 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).
20. The presumption disappears if there is competent evidence to the contrary. *Id.*
21. The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2006).
22. Proof that the order, decision, determination, or action 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).
23. "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).
24. 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).
25. 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).

26. “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).
27. 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).
28. 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).
29. 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. FACTS

The subject property of this appeal is an improved 160 acre agricultural parcel. The Taxpayer disputes both the valuation of said subject property and the equalization of the subject property to other comparable properties. The Taxpayer limited the disputed subject matter of his

appeal to only one improvement of the subject property - this is improvement #6 shown on the property record file, Exhibit 9:1, hereafter referred to as the “subject property.” The county property record file shows this improvement as two items, but the testimony of the Taxpayer was that it was one building hereafter referred to as “machine shed.” The Taxpayer testified that neither the valuation of the land nor the valuation of other improvements was in dispute.

Similarly, the Taxpayer testified that the only equalization in dispute was with the machine shed.

The disputed improvement on the subject property is a metal steel farm utility building that measures 100 feet by 50 feet by 15 feet. A portion of the machine shed has been improved as a shop with concrete flooring over an area 50 feet by 50 feet by 15 feet.

V. ANALYSIS

The Taxpayer testified that he was only putting into dispute in this appeal the taxable value of the machine shed shown as item #6 to Exhibit 9:1. He believes that his assessment of taxable value for this building is too high because it is greater than his actual cost to build the subject property. The Taxpayer testified that he was not putting into dispute the valuation of any other improvements or the land of the subject property.

The County determined that the actual value for the machine shed was \$96,075 as shown on Exhibit 9:1. The Taxpayer testified that his concern with the County’s determination of actual value of the subject property was that the cost to him to build the machine shed, \$48,218, was considerably less than the assessed value determined by the County.

The Taxpayer testified that his cost to build the machine shed in 2006 was itemized as follows:

1. Cost for steel machine shed, Exhibit 1:2;	\$20,150.
Bill of Lading for Building, Exhibit 1:3,	
2. Cost for Concrete flooring, Exhibit 8:1,	\$9,318,
3. Estimate for Labor to build building, Exhibit 7:1,	\$7,500,
	Total <u>\$36,968.</u>

An additional \$7,500 was added after the protest hearing for additional labor to install the building so as to match the “formula” suggested by the County Board of Equalization. Exhibit 7:1. In addition, another \$3,750 was added for cost of labor to install the concrete. Exhibit 7:1. This brought the total estimate to build the machine shed to \$48,218 (\$36,968 + \$7,500 + \$3,750) . Exhibit 7:1. The Taxpayer testified his opinion of actual value for his machine shed for 2007 was \$48,218. The County’s assessed valuation for the machine shed for 2007 was \$96,075.

The Taxpayer provided evidence of three improved agricultural parcels which he alleged were comparable to the subject property’s machine shed. Exhibits 10, 11 and 12.

The County Assessor testified that she had the County’s contract appraiser reinspect the subject property and the improvement in dispute, the machine shed. The appraiser subsequently recommended reducing the taxable valuation of the machine shed to \$67,505. She approved the changes recommended by the appraiser and it was her opinion that the actual value of the improvement in dispute was \$67,505. This was a reduction in taxable valuation of the improvement in dispute of \$28,570. This reduction reduced the taxable valuation of improvements to the subject property to \$105,000 from the protested taxable valuation of \$133,770. Exhibit 1:1.

The County's contract appraiser testified that he had inspected the subject property since the protest hearing and had recommended changes which had been approved by the County Assessor. These changes included a reduction in quality to Fair Plus, a reduction from a rating of 30 to 20, and an additional depreciation of 8 percent. The reduction in quality was the result of a determination that the steel used in the building was steel rebar and not steel and its gauge was not of the normal quality. In addition, there were no footings around the building and minimal insulation. The County utilized the Cost approach to valuing the subject property. Exhibit 13:39-40.

The County's contract appraiser testified that the alleged comparable parcels provided by the Taxpayer were not comparable. Exhibits 10, 11 and 12. Those parcels shown on exhibits 11 and 12 are "pole barns" and not comparable to the steel rebar building of the Taxpayer. The parcel in Exhibit 10 was built in 2005 and the subject property was built in 2006. Exhibit 10:1. The Appraiser testified that Exhibit 10 was a better built building and was 11,100 square feet in size as compared to the 7,500 square feet of the subject property.

"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.

When using "comparables" to determine value, similarities and differences between the subject property and the comparables must be recognized. *Property Assessment Valuation*, 2nd Ed., 1996, p.103. Most adjustments are for physical characteristics. *Property Assessment Valuation*, 2nd Ed., 1996, p.105. "Financing terms, market conditions, location, and physical

characteristics are items that must be considered when making adjustments . . .” *Property Assessment Valuation*, 2nd Ed., 1996, p. 98.

The Commission finds that the Taxpayers alleged comparable parcels are not comparable to the subject property due to differences in age, size and building construction materials.

The County Appraiser testified that he had inspected the subject property and the improvement in dispute after the initial notice of determination of 2007 valuation by the County Board. He found some needed changes which resulted in a reduction of the County’s opinion of value for the subject property. The County Appraiser testified that the adjusted fair market value for the subject property after inspection was \$67,505. This opinion of value is \$28,570 less than the County’s original valuation of \$96,075. The Commission gives great weight to this new opinion of value by the County Appraiser as endorsed and testified to by the County Assessor as stated above and finds that this new opinion of actual value should be determinative of the actual value of the subject property. The Taxpayer did not provide any other evidence of actual value for the subject property.

The Commission has examined all of the evidence presented and finds that the presumption that the County Board failed to faithfully perform its duties or acted without sufficient competent evidence as to the issue of valuation is rebutted by the evidence of value based upon the Appraiser’s testimony. *City of York v York County Bd of Equalization*, 266 Neb. 297, 665 N.W. 2d 445 (2003) and *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W. 2d, 518 (2001). Further, the same evidence is proof by clear and convincing evidence that the County Board was arbitrary or unreasonable in their decision.

The appeal of the Taxpayer is granted to the extent that the taxable value of the improvements to the subject property is \$105,200.

**VI.
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. Competent evidence has been adduced that the County Board failed to faithfully perform its official duties and to act on sufficient competent evidence to justify its actions.
4. Sufficient, clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary has been adduced and the decision of the County Board should be reversed.

**VII.
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, 2007, is vacated and reversed.
2. Taxable value, for the tax year 2007, of the subject property is:

Agricultural land	\$249,845.00
Outbuildings	<u>\$105,200.00</u>
Total	<u>\$355,045.00.</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 2007.
7. This order is effective for purposes of appeal on May 29, 2008.

Signed and Sealed. May 29, 2008.

Nancy J. Salmon, 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.