

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

CHARLES KENT PRESTON,)	
)	
Appellant,)	Case No. 07C-251
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE JEFFERSON
JEFFERSON 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 Kent Preston ("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 31, 2008, pursuant to an Order for Hearing and Notice of Hearing issued January 10, 2008. Commissioners Wickersham, Salmon, and Hotz were present. Commissioner Warnes 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.

Charles Kent Preston was present at the hearing without legal counsel.

Linda A. Bauer, County Attorney for Jefferson County, Nebraska, was present as legal counsel for the Jefferson 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.

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 W 400 feet Lots 2 & 3, Nelson Subdivision, Fairbury, Jefferson 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 Jefferson 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. 07C-251

Description: W 400 feet Lots 2 & 3, Nelson Subdivision, Fairbury, Jefferson County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$100,190.00	\$20,038.00	\$100,190.00
Improvement	\$77,885.00	\$77,885.00	\$77,885.00
Total	\$178,075.00	\$97,923.00	\$178,075.00

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 10, 2008, set a hearing of the appeal for March 31, 2008, at 1:00 p.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	\$100,190.00
Improvement value	<u>\$ 77,885.00</u>
Total value	<u>\$178,075.00.</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. “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. *City of York v. York County Bd. Of Equalization*, 266 Neb. 297, 64 N.W.2d 445 (2003).
16. 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).
17. The presumption disappears if there is competent evidence to the contrary. *Id.*
18. 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).
19. 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).
20. "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).
21. 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).

22. 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).
23. “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).
24. 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).
25. 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).
26. 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 a 133,584.00 square foot tract that is improved with a 6,000 square foot commercial building. (E2). A permit for construction of the building was obtained in 2002. (E2:17). The building was 85% complete as of March 3, 2003. (E2:19). Various changes in the contribution to value made by the building as shown on the Assessor's records may be attributed to the extended construction period for the building and the removal of a trailer house from the assessment records. (E2). For the tax year 2004 the size of the parcel was determined to be 133,584 square feet (E2:8). In 2004 the contribution to value of the land component was determined to be 20,040.00 or \$.15 per square foot. (E2:8). For the tax year 2007 the contribution to value of the land component was \$100,190.00 or \$.75 per square foot. (2:9).

The Taxpayer asserted that actual value of the subject property was less than determined by the County Board and in particular that the contribution to value of the land component was too high, that the value of the land was "out of line" and that because the subject property is in an area determined to be blighted and substandard for purposes of the Nebraska Redevelopment Act its taxable value should be frozen.

The Taxpayer testified that he believed that the contribution to value of the land component was determined based on a transaction involving an Orschlen store to the north of the subject property. The County Board introduced a property record file for the parcel on which the Orschlen store is located. (E4:1). A transaction concerning that parcel was recorded on March 14, 2006. (E4:1). The County Assessor is required to report to the Property Tax Administrator

information about sold parcels for development of a sales file. Neb. Rev. Stat. 77-1327 (Cum. Supp. 2006). Transactions are analyzed to determine whether they are qualified sales. See, *Id.* A qualified sale is an arm's length transaction. 350 Neb. Admin. Code, ch 12, §002.12 (1/07). Qualified sales are used by the Property Tax Administrator to develop Reports and Opinions submitted annually to the Tax Equalization and Review Commission. 350 Admin Code, ch 12, (1/07). The Reports and Opinions of the Property Tax Administrator for the year 2007 are based on transactions occurring in the period from July 1, 2003 to June 30, 2006. 18 qualified transactions are shown for assessor location Fairbury in the *2007 Reports and Opinions of the Property Tax Administrator for Jefferson County* at page 48. *Id.* In the tax year 2006, taxable value of the Orschlen store parcel was \$65,376.00. (E4:1). A qualified sale at \$1,200,000.00 would have produced an assessment to sale ratio of 5.41 ($65,000 \div 1,200,000 = .0541$). The minimum ratio reported by the Property Tax Administrator is 58.18. *2007 Reports and Opinions of the Property Tax Administrator for Jefferson County*, pg 48. It is clear, therefore, that the transaction concerning the Orschlen store parcel was not considered to be a qualified transaction for purposes of the 2007 Property Tax Administrator Reports and Opinions for Jefferson County.

The Taxpayer purchased the subject property and additional lands totaling 10 acres in 1995 and 1997 for \$31,825.00. The average price per acre was \$3,000.00. The Taxpayer testified that he believed the contribution to actual value of the land component should be \$3,000.00 per acre. The purchase price of a parcel can be considered for purposes of determining its actual value. *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982). In this appeal the transactions in which the subject property was acquired occurred 9 and 10 years prior to the assessment date and no evidence was presented

showing that the transactions were at arm's length. The purchase price of the subject property in 1995 and 1997 is not competent evidence of its actual value for the tax year 2007. It is the Taxpayer's burden to show what actual value of the subject is as of the assessment date. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965). The Taxpayer has not met that burden.

The contribution to actual value of the improvement component of the subject property for the tax year 2005 was \$77,885.00 (E2:1). That determination appears to be based on a determination that the contribution to value at 100% should be \$12.98 per square foot. (E2:4). In turn a contribution to value of \$12.98 per square foot is derived from use of an income approach. (2:14). That estimate of a contribution to actual value appears to have been developed in the year 2002. (E2:14). Typically the income approach is used to estimate the value of a parcel as a whole. Residual capitalization techniques can, however, be used to develop estimates of the contribution to value of components such as land and improvements when the income approach is used for valuation of a parcel. *Property Appraisal and Assessment Administration*, International Association of Assessing Officers, 1990, pg. 294. There is no evidence that the income approach was used by the County Board to make its determination of the contribution to value of the land component. The Commission has reviewed published appraisal reference works described in chapter 5 of its rules and regulations. Based on that review and the procedures evidenced in Exhibit 2, the Commission cannot conclude that the County Board's determination of actual value was based on a generally accepted mass or fee appraisal technique. It is of course necessary to do more than criticize the County Board's determination. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983). As noted

above, the Taxpayer has failed to produce any competent evidence of actual value as of the assessment date and relief cannot be granted on the Taxpayer's claim that actual value as determined by the County Board was excessive.

Although the Taxpayer in his appeal asserted that the taxable value of the subject property was not "in line with other property in the area," no evidence was presented to the Commission concerning the actual value or the taxable value of any other parcels in Jefferson County. The Commission is without any evidence in support of a claim that taxable value as determined by the County Board is not equalized with other comparable or similar property within the County and need not consider the Taxpayer's equalization claim further.

Finally the Taxpayer asserts that taxable value of the subject property should be frozen because it is in an area determined to be blighted and substandard for purposes of the Nebraska Redevelopment Act. Provisions of the Nebraska Redevelopment Act are found in Article 58 chapter 5 of Nebraska Statutes. A review of those statutes shows that merely designating an area as blighted and substandard pursuant to the act does not cause the taxable value of a parcel in the area to freeze. A determination that an area is blighted or substandard does make it possible to seek the benefit of the act to finance improvements on a parcel. See, Neb. Rev. Stat. §77-58-505 (Reissue 2004). If a parcel is qualified for benefits under the act, property taxes are calculated on actual value of the parcel and the resulting tax is apportioned between the amount dedicated to financing improvements and the amount to be used by the political subdivisions with a levy applicable to the property. See, Neb. Rev. Stat. §77-507 (Reissue 2004). The Apportionment is based on actual value of the parcel in the year prior to qualification and actual value in the year of assessment. *Id.* Even if a parcel receives benefits under the act, its taxable value is not frozen.

The Taxpayer's understanding of the application of the provision's of the Nebraska Redevelopment Act is not correct.

**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 adduced sufficient, clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary.
4. The Taxpayer did not present competent evidence of the actual or equalized taxable value of the subject property.

**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	\$100,190.00
Improvement value	<u>\$ 77,885.00</u>
Total value	<u>\$178,075.00.</u>
3. This decision, if no appeal is timely filed, shall be certified to the Jefferson County Treasurer, and the Jefferson 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 22, 2008.

Signed and Sealed. May 22, 2008.

Wm. R. Wickersham, Commissioner

Nancy J. Salmon, Commissioner

Robert W. Hotz, 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.