

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

ANN E. STERGIOU,)	
)	
Appellant,)	Case No. 07R-128
)	
v.)	DECISION AND ORDER
)	REVERSING THE DECISION OF
DOUGLAS COUNTY BOARD OF)	THE DOUGLAS COUNTY BOARD OF
EQUALIZATION,)	EQUALIZATION
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Ann E. Stergiou ("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 December 3, 2008, pursuant to an Order for Hearing and Notice of Hearing issued October 8, 2008. Commissioners Warnes and Salmon were present. Commissioner Warnes was the presiding hearing officer. Commissioner Wickersham was excused from participation by the presiding hearing officer. A panel of three commissioners was created pursuant to 442 Neb. Admin. Code, ch. 4, §011 (10/07). Commissioner Hotz was absent. The appeal was heard by a quorum of a panel of the Commission.

Ann E. Stergiou was present at the hearing. No one appeared as legal counsel for the Taxpayer.

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.

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 ("the Subject Property") is described in the table below.
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:

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Description: WATERFORD LOT 201 BLOCK 0 IRREG, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$37,000.00	Included in Total	\$37,000.00
Improvement	\$192,800.00	Included in Total	\$189,800.00
Total	\$229,800.00	\$208,000.00	\$226,800.00

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 October 8, 2008, set a hearing of the appeal for December 3, 2008, at 1:00 p.m. CST.

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 2007 is:

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Land value	\$ 37,000.00
Improvement value	<u>\$185,399.00</u>
Total value	<u><u>\$222,399.00.</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. “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).
5. 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).
6. 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).
7. “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.
8. 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).
9. 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).
10. 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).

11. 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).
12. 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).
13. 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).
14. 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).
15. 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).

16. The presumption disappears if there is competent evidence to the contrary. *Id.*
17. 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).
18. 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).
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. “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).
23. 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).
24. A Taxpayer, who only produced evidence that was aimed at discrediting valuation methods utilized by the 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).
25. A 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 taxable value) *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 property with a one story townhouse of 1,462 square feet finished living area built in 2005. (E11:2). The subject property is rated good for both quality and condition. (E12:1).

The Taxpayer testified that her appeal should be granted for several reasons. In addition to her testimony, she provided her mail in protest to the County Board of Equalization which lists her reasons for this appeal. (E1:4).

VALUATION

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. Her first concern was that the size of the finished basement of the subject property was 750 square feet rather than the 950 used to calculate assessed value. (E1:6 and E12:5). The Taxpayer testified that she measured the finished basement area and consulted the building plans for the subject property to confirm the size. (E10). The Commission also notes the inspection report by the Appraiser for the County Assessor who inspected the subject property on July 28, 2008, and wrote in his inspection notes that the square footage of the finished basement was 950 square feet. (E11:2) The difference in size between the two opinions is 200 square feet. The appraiser for the County Assessor did not testify nor did anyone else testify to controvert the Taxpayer's testimony as to the size of the finished basement area.

Other evidences of the larger size (950 square feet) of the finished basement of the subject property are shown on both the first assessor's report, Exhibit 1, and also the second report, Exhibit 12. However, the referee's report, Exhibit 1 page 3, recommends a reduction in the assessed valuation for 2007 of \$3,000 based on a 200 square foot reduction in size times \$15 per square foot. There is no evidence provided to the Commission which supports that the referee had an objective basis for determining the correct size of the finished basement. Neither is there evidence of a \$15 per square foot valuation for a finished basement. The Commission

does find on the cost detail sheet of the County Assessor's second assessment report a \$25.13 per square foot valuation for each unit of a finished basement. (E12:5). This valuation would evidence a \$5,026 (200 square feet x \$25.13 per square foot) reduction in the total replacement cost new without add ons. (E12:5).

Other evidence of the size of the finished basement of the subject property is that the County Board of Equalization's determination reduced the recommended assessed valuation of the Appraiser for the County Assessor by the same amount as that recommended by the referee - \$3,000; however, there was no explanation provided for this reduction.

The Commission finds, based upon all of the evidence before it, that the finished square footage of the subject property is 750 square feet and this would result in a reduction of \$5,026 in the total replacement cost new without add ons as shown below. The following itemizes the corrected assessed valuation for the subject property using the cost valuation approach. The itemization is duplicative of the Cost Detail of Building sheet used by the Appraiser for the County Assessor shown on Exhibit 12 page five. The Commission finds that the addition of the itemized values in Exhibit 12 page five are incorrect.

	Units	\$/Unit	Value
Building Square Footage	1,462	\$74.85	\$109,431
Walkout	1	\$19.14	\$19
Attached	537	\$19.98	\$10,728
Open slab	224	\$5.11	\$1,145
Slab Roof Ceil	60	\$23.11	\$1,387
Finished Basement	750	\$25.13	\$18,848

Wood Deck	224	\$13.26	\$2,971
Bsmnt Conc 9 ft	1,462	\$14.89	\$21,762
Appliance RCN			\$5,648
Plumbing Adj:			\$7,134
Rough In Adj:			(\$351)

Total Replacement Cost New (RCN)			Total = \$178,722
Add Ons			+ \$2,979

RCN + Add Ons			\$181,701
Less Depreciation			- \$1,702

RCN + Add Ons less Depreciation			\$179,999
Times the Neighborhood Factor (1.03)			= \$185,399
Land			\$37,000
Total RCN + Add Ons less Depreciation x Neighborhood Factor+ Land =			\$222,399

The Commission finds that the corrected assessed valuation for 2007 is \$222,399.

The testimony of the Taxpayer was that there was a second error in the physical characteristics of the subject property in that there was neither a sunroom nor a 300 square foot deck on January 1, 2007. Her testimony was that these “add ons” were not constructed until after January 1, 2007. In the Assessor’s second assessor’s report, Exhibit 12 page three, the two items are shown on the diagram of the subject property, but are not included in the cost detail of

building shown on Exhibit 12 page 5. The Commission finds that the neither the sunroom or the new 300 square foot deck were improvements to the subject property as of January 1, 2007.

This fact is not material to this appeal since the County Appraiser did not include these two items in its assessed valuation of the subject property for 2007.

EQUALIZATION

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. She provided three alleged comparable parcels at the time of the protest hearing before the County Board of Equalization and a fourth parcel as part of this appeal hearing. (E4:5, E4:9, E4:21 and E9:1).

From the Commission's review of these four alleged comparable parcels only one has a finished basement, that parcel shown as Exhibit 4:21. The Commission finds that the other three parcels are not comparable to the subject property without an adjustment being made for the lack of finished basement and other differences in physical attributes. The subject property's finished basement is assessed for valuation in the amount of \$25.13 per square foot times the 750 square foot for a total assessed valuation of \$18,848 for just the finished basement alone.

The Commission is unable to compare the subject property to that parcel shown as Exhibit 4 page twenty one due to there being no cost detail sheet provided as part of the property record file for this fourth alleged comparable property. The Commission finds that it does not have the evidence to determine if that parcel shown as Exhibit 4 page twenty one is comparable to the subject property despite it having many similar physical attributes to the subject property. The Commission requires that Taxpayers provide the property record file for any parcel they intend to offer as alleged comparable parcels. (Commission's Order for Hearing, Item 13). The

Commission finds that the parcel shown as Exhibit 4 page twenty one has less living and basement area and one less bathroom. These differences in physical attributes alone would account in adjustments which would bring the assessed valuation of this parcel closer in valuation to the subject property.

“Comparing assessed values of other properties with the subject property to determine actual value has the same inherent weakness as comparing sales of other properties with the subject property. The properties must be truly comparable.” *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998).

“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.

“Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that no one part is compelled to pay a disproportionate share of the tax. Where it is impossible to secure both the standards of the true value of a property for taxation and the

uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. However, the burden is on the taxpayer to show by clear and convincing evidence that the valuation placed upon the taxpayer's property when compared with valuation placed on other similar property is grossly excessive.” *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).

A taxpayer who offers no evidence that the subject property is valued in excess of its actual value and who only produces evidence that is aimed at discrediting the valuation methods utilized by the county assessor fails to meet his or her burden of proving that the value of the property was not fairly and proportionately equalized or that valuation placed upon the 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).

The Commission finds that the Taxpayer has provided competent evidence to rebut the presumption that the County Board of Equalization faithfully performed its duties and had sufficient competent evidence for its decision and the Taxpayer did show by clear and convincing evidence that the determination of the County Board of Equalization was arbitrary or unreasonable and that a new assessed valuation of \$ **\$222,399** is the corrected valuation for 2007. The Commission does not find evidence that taxable value of the subject property as of January 1, 2007, is not equalized with the taxable value of other real property.

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 produced competent evidence that the County Board failed to faithfully perform its official duties and to act on sufficient competent evidence to justify its actions.
4. The Taxpayer has 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 vacated and reversed.

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

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Land value	\$ 37,000.00
Improvement value	<u>\$185,399.00</u>
Total value	<u><u>\$222,399.00.</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 31, 2009.

Signed and Sealed. March 31, 2009.

Nancy J. Salmon, 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.