

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

| | | |
|-------------------------|---|-----------------------------|
| GARY L. ANDERSON, |) | |
| |) | |
| Appellant, |) | Case No. 07R-141 |
| |) | |
| v. |) | DECISION AND ORDER |
| |) | AFFIRMING 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 Gary L. Anderson ("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 20, 2008, pursuant to an Order for Hearing and Notice of Hearing issued August 4, 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. Commissioner Hotz was absent. The appeal was heard by a quorum of a panel of the Commission.

Gary L. Anderson 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.

**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:

Description: RAMBLERIDGE LOT 142 BLOCK 0 LTS 141 & 142 IRREG, Douglas County, Nebraska.

| | Assessor Notice Value | Taxpayer Protest Value | Board Determined Value |
|-------------|-----------------------|------------------------|------------------------|
| Land | \$29,000.00 | Included in Total | \$29,000.00 |
| Improvement | \$143,400.00 | Included in Total | \$143,400.00 |
| Total | \$172,400.00 | \$139,000.00 | \$172,400.00 |

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 August 4, 2008, set a hearing of the appeal for October 20, 2008, at 11:00 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. Actual value of the subject property as of the assessment date for the tax year 2007 is:

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Land value \$ 29,000.00

Improvement value \$143,400.00

Total value \$172,400.00.

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. 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).
8. 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).
9. The presumption disappears if there is competent evidence to the contrary. *Id.*
10. 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).
11. 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).
12. "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).
13. 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).

14. 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).
15. “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).
16. 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).
17. 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).
18. 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. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965).

IV. ANALYSIS

The subject property is an improved residential parcel with a multi level style house built in 1980. (E3:1). The house has 2,048 square feet of residential living space and is of average quality and condition.

The Taxpayer alleges that the subject property is not uniformly and proportionately assessed in comparison to three parcels which he alleges are comparable. The Taxpayer testified that the three alleged comparable properties are located at 5912 N. 110th circle, 5930 N. 110th circle, and 6120 N. 108. The Commission’s review of these three parcels in comparison to the subject property is shown in the table below.

| | Subject Property | 5912 N. 110th Circle | 5930 N. 110th Circle | 6120 N. 108 |
|-------------------------------|-------------------------|--|--|--------------------|
| Exhibit Number | 3:1-6 | 4:6-8 | 6:111-114 | 6:115-121 |
| House Style | Multi level | Tri level | Multi level | Multi level |
| Year Built | 1980 | 1981 | 1979 | 1988 |
| Quality | Average | Average | Average | Average |
| Condition | Average | Good | Average | Good |
| Residential Square Feet | 2,048 | 1,748 | 1,370 | 1,102 |
| Basement Square Feet | 576 | 552 | 1,248 | 1,152 |
| Basement Finished Square Feet | 414 | 225 | 600 | 450 |
| Assessed Valuation 2007 | \$172,400.00 | \$141,500.00 | \$129,800.00 | \$129,900.00 |

VALUATION

The Commission has analyzed the inspection report, Exhibit 2 page three, for necessary adjustments to the market calculation detail. Adjustments required to be made based on the County’s inspection include correcting the size for: the residential living area, total basement

area, the finished basement area, the heating and air conditioning, and the garage. In addition, the condition was changed and the assessed valuation adjusted. The County's property record file, Exhibit 3 page one reflects the old information used by the County before the inspection. The County's "market calculation detail" shown on Exhibit 3 page four uses the pre-inspection sizes and attributes for the subject property and calculates an assessed valuation of \$172, 390.

The Commission has analyzed the valuation changes necessitated by the County's inspection and the necessary adjustments. The following adjustments would be necessitated by the corrections made as a result of the County's inspection:

1. Increase in the residential living area of 464 square feet
+\$13,920 (464 square feet x \$30/square foot, see Exhibit 3 page four)
2. Increase due additional heating and cooling of 464 square feet
+\$3,248 (464 square feet x \$7/square foot, see Exhibit 3 page four)
3. Decrease in the size of the total basement area
-\$10,368 (864 square feet x \$12/square foot, see Exhibit 3 page four)
4. Decrease in the size of the finished basement area
-\$5,720 (286 square feet x \$20/square foot, see Exhibit 3 page four)
5. Decrease in rating of condition
-\$10,000 (The explanation for this reduction is stated below

Another change made to the property record file for the subject property based on the inspection results as shown on Exhibit 2 page three is that the condition was changed from "good" to "average". The market detail sheet for the subject property, Exhibit 3 page 4,

however, still shows a “good condition” which condition has an assessed valuation of \$10,000. The County’s comparable number 1 to its Assessor Report, Exhibit 2 page five shows a parcel at 9826 Hartman Avenue which has a condition of “average”. The market detail sheet for this parcel does not show any increased valuation for this average condition. The Commission finds that the valuation for a parcel in “good condition” is \$10,000.

6. Increase in the size of the garage

+ \$5,360 (268 square feet x 20/square foot, see Exhibit 3 page four)

Net change in assessed valuation for 2007 = Decrease of \$3,560.

The 2007 assessed valuation by the County was in the amount of \$172,400. (E1:1). A reduction to this amount of \$3,506 equals \$168,840. The Commission finds that the assessed valuation for 2007 for the subject property is \$168,840.

The Commission finds that this decrease is not grossly excessive and is not sufficient competent evidence to rebut the presumption or to show by clear and convincing evidence that the County was arbitrary or unreasonable in its decision regarding the assessed valuation for the subject property for 2007.

EQUALIZATION

The Taxpayer alleges that the parcels he has provided show evidence of non uniform and disproportionate assessment compared to the subject property. He alleges that these parcels, Exhibit 4 pages six to eight, Exhibit 6 pages one hundred eleven to one hundred fourteen and Exhibit 6 pages one hundred fifteen to one hundred twenty one are comparable to the subject property. The Commission finds from the analysis of key attributes to the properties, as shown in the table, that the subject property has substantially more residential living space and that other

physical attributes differ. The Commission finds that the alleged comparable parcels are not comparable to the subject property without significant adjustments for size, condition and in the case of that parcel shown on Exhibit 6 pages one hundred eleven to one hundred twelve, the year built.

“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.

The Taxpayer did not provide evidence of sales of alleged comparable parcels.

“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).

"There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. That presumption 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. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board." *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb.App. 688, 696, 584 N.W.2d 837, 842-843 (1998).

The Commission finds that the Taxpayer has not rebutted the presumption that the County Board of Equalization faithfully performed its duties and had sufficient competent evidence for its decision both as to its decision as to valuation and equalization. Despite this fact, the Commission has reviewed all of the evidence presented and further finds that the Taxpayer has not shown by clear and convincing evidence that the County Board's decision was either arbitrary or unreasonable nor has he shown by the reasonableness of the evidence a new

valuation or that the subject property was not equalized with the taxable value of other real property. The appeal of the Taxpayer is denied

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 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 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:

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| | |
|-------------------|----------------------|
| Land value | \$29,000.00 |
| Improvement value | <u>\$143,400.00</u> |
| Total value | <u>\$172,400.00.</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 June 8, 2009.

Signed and Sealed. June 8, 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.