

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

|                          |   |                              |
|--------------------------|---|------------------------------|
| LANE M. NELSON,          | ) |                              |
|                          | ) |                              |
| Appellant,               | ) | Case No. 09R 029             |
|                          | ) |                              |
| v.                       | ) | DECISION AND ORDER           |
|                          | ) | AFFIRMING THE DECISION OF    |
| SAUNDERS COUNTY BOARD OF | ) | THE SAUNDERS COUNTY BOARD OF |
| EQUALIZATION,            | ) | EQUALIZATION                 |
|                          | ) |                              |
| Appellee.                | ) |                              |

The above-captioned case was called for a hearing on the merits of an appeal by Lane M. Nelson ("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 June 11, 2010, pursuant to an Order for Hearing and Notice of Hearing issued April 1, 2010. Commissioner Warnes, Vice-Chairperson of the Commission, was the presiding hearing officer. Commissioner Wickersham, Chairperson of the Commission, was absent. Commissioner Warnes, as Vice-Chairperson acting in the absence of the Chairperson, designated Commissioners Warnes, Salmon, and Hotz as a panel of the Commission to hear the appeal. Commissioner Salmon was excused. Commissioner Hotz was present. The appeal was heard by a quorum of a panel of the Commission.

Lane M. Nelson was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Scott Tingelhoff, County Attorney for Saunders County, Nebraska, was present as legal counsel for the Saunders 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 (Reissue 2009). 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, 2009, 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, 2009.

**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, 2009, ("the assessment date") by the Saunders 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: TR IN S ½ SE SW 27 - 14 - 7 (3.038), Saunders County, Nebraska.

|             | Assessor Notice Value | Taxpayer Protest Value | Board Determined Value |
|-------------|-----------------------|------------------------|------------------------|
| Land        | \$35,000.00           | \$7,192.00             | \$35,000.00            |
| Improvement | \$55,560.00           | \$15,000.00            | \$37,130.00            |
| Total       | \$90,560.00           | \$22,192.00            | \$72,130.00            |

4. An appeal of the County Board's decision was filed with the Commission.
5. An Order for Hearing and Notice of Hearing issued on April 1, 2010, set a hearing of the appeal for June 11, 2010, at 11:00 a.m. CDST.
6. 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.
7. Actual value of the subject property as of the assessment date for the tax year 2009 is:

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Land value           \$35,000.00

Improvement value \$37,130.00

Total value         \$72,130.00.

**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) (Reissue 2009).

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 2009).
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 2009).
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 2009).
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) (Reissue 2009).

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. 2008).
11. Proof that the order, decision, determination, or action appealed from 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 a rural residential parcel consisting of 3.038 acres improved with a 1 ½ story house of 1,358 square feet living area built in 1895. (E2:2) The house has been rated average for quality and fair for condition. (E2:2).

The Taxpayer has asserted that actual value of the subject property as of January 1, 2009, is less than actual value as determined by the County Board. The Taxpayer testified that he alleges the actual value of the subject property should be less than that assessed for 2009 because the house is "very old." His testimony was that the subject property is older than any other property which the County Board had produced as alleged comparables. In addition, the Taxpayer testified that there had not been any improvements to the subject property and the parcel was in "bad shape." The Taxpayer testified that he had torn down three of the older support buildings and built a 1,200 square foot garage.

The Commission notes that from the property record file for the subject property that the improvements on the parcel have been valued by the County Assessor using the cost approach to valuation. (E2:2). The property record file shows that the residence has been depreciated 75% due to physical depreciation, which would correspond to the age of the house. (E2:2). The itemization of miscellaneous improvements to the subject property are shown on Exhibit 2, page 2 and include \$500 for a barn, \$15,355 for the 1,200 square foot garage, \$5,040 for a solid wall porch, and \$1,625 for a porch. The garage is depreciated 25%. The total of all other improvements is \$7,165. (E2:2).

The County Assessor valued the land of the subject property using the schedule shown on Exhibit 3, page 1. Exhibit 3, page 1 states that the rural residential acreages are valued at \$28,000 for the first acre and \$3,500 for each remaining acre. (E3:1). The land component of the subject property, 3.038 acres, was therefore valued at \$35,000 (1 x \$28,000 + 2.038 x \$3,500). The County Board provided six comparable parcels where the land component of rural residential acres were valued in the same way. (E3:1).

The Taxpayer did not provide the property record files for any comparable parcels. His attempt to introduce the property record file for an alleged comparable parcel which he believed was not valued in accordance with the County Assessor's residential acreage schedule was objected to and its admission denied due to untimely submission. The Commission's Order for Hearing, paragraph 11, requires that parties submit all evidence at least 21 days in advance if used for rebuttal. The Commission found that the Taxpayer did not show good cause for his untimely submission of his evidence.

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. The presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence on appeal to the contrary. From that point on, 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. In an appeal to the county board of equalization or to the district court, and from the district court to this court, the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere

difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment. *Id.* Taxpayer must introduce competent evidence of actual value of its property in order to successfully claim that a property is overvalued. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N. W. 2d 515 (1981).

The Commission finds that the Taxpayer has not provided competent evidence to rebut the presumption that the County Board faithfully performed its duties and did have sufficient competent evidence to make its determination.

Despite the fact that the Taxpayer did not rebut the presumption, the Commission has reviewed all of the evidence presented for the reasonableness of the valuation determined and finds that the Taxpayer has not provided clear and convincing evidence that the County Board's decision was arbitrary or unreasonable. The appeal of the Taxpayer is denied.

The Commission has taken jurisdiction in this appeal despite the fact that the Taxpayer did not sign the original protest form as required by *Neb. Rev. Stat. Section 77-1502* (Reissue 2009). We conclude the signature requirement of *Section 77-1502* is mandatory but not jurisdictional, and there is no evidence that either party raised the issue at any time relevant to these proceedings. See *Creighton St. Joseph Regional Hosp. v. Nebraska Tax Equalization & Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

**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, 2009, is affirmed.
2. Actual value, for the tax year 2009, of the subject property is:

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|                   |                     |
|-------------------|---------------------|
| Land value        | \$35,000.00         |
| Improvement value | <u>\$37,130.00</u>  |
| Total value       | <u>\$72,130.00.</u> |

3. This decision, if no appeal is timely filed, shall be certified to the Saunders County Treasurer, and the Saunders County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2009).
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 2009.
7. This order is effective for purposes of appeal on June 23, 2010.

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Robert W. Hotz, 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 (REISSUE 2009), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.**