

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

JOHN P. NEPPER JR.,)	
)	
Appellant,)	Case No. 08R 503
)	
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 John P. Nepper Jr. ("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 5, 2010, pursuant to an Order for Hearing and Notice of Hearing issued February 9, 2010. Commissioner Wickersham, Chairperson of the Commission, was the presiding hearing officer. Commissioner Warnes was absent. Commissioner Wickersham, as Chairperson, designated Commissioners Wickersham, 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.

John P. Nepper Jr. 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 (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, 2008, 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, 2008.

**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, 2008, ("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: Lot 1 Block 0 West Fairacres Village, Omaha, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$66,200.00	\$25,000.00	\$66,200.00
Improvement	\$202,700.00	\$193,295.00	\$202,700.00
Total	\$268,900.00	\$218,295.00	\$268,900.00

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 February 9, 2010, set a hearing of the appeal for April 5, 2010, at 1:00 p.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 2008 is:

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Land value \$ 66,200.00
Improvement value \$202,700.00
Total value \$268,900.00.

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) (Cum. Supp. 2008).
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. 2008).
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 an improved lot in the City of Omaha. The lot is improved with a residence and an attached garage. The Taxpayer asserts that actual value of the subject property as determined by the County Board is too high, and specifically that the contribution to value of the land is overstated.

The Taxpayer submitted assessment and sales information for three parcels of real property. One of the parcels submitted by the Taxpayer last sold in 2002 and another in 2001. (E7 and E8). Those sales are too distant from the assessment date for further consideration. The physical characteristics, attributes and amenities of the subject property and the parcel presented by the Taxpayer for comparison if sold within 5 years of the assessment date, with assessment and sale information, is summarized in the following table.

Descriptor	Subject	Parcel 1
Exhibit	E2:8-13	E10:1-6
Location	223 N 127 Plaza	206 N 127 Plaza
Lot Size	5,776 Sq Ft	5,890 Sq Ft
Condition	Fair	Good
Quality	Good	Good
Yr Built	1985	1985
Exterior Walls	Frame Siding	Frame Siding
Style	Townhouse One Story	Townhouse One Story
Area Above Ground	1,776 Sq Ft	1,780 Sq Ft
Roof Cover	Wood Shake	Wood Shingle
HVAC	Cent Air to Air	Cent Air to Air

Descriptor	Subject	Parcel 1
Basement	1,776 Sq Ft	1,780 Sq Ft
Finished	1,131 Sq Ft	1,000 Sq Ft
Bedrooms	2	2
Bathrooms	3	2
Garage Type	Attached	Attached
Garage Area	422 Sq Ft	440 Sq Ft
Misc Imp	Masonry Fireplace, Security System, Sprinkler System, Wood Deck, Covered Wood Deck, Brick Veneer	Masonry Fireplace, 2 Covered Wood Decks, Brick Veneer
Lot Value	\$66,200	\$66,200
Imp Value	\$202,700	\$227,500
Taxable Value	\$268,900	\$293,700
Sale Date		11/17/09
Sale Price		\$210,000

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. The subject property and parcel 1 have elements of comparability.

The comparison parcel sold after the death of its owner, one year and eleven months after the assessment date at issue in this appeal. The sale of the comparison parcel was part of the settlement of an estate. Settlement of an estate is an inducement to sell that is not present in other sales. A sale of property after the valuation date in question may be considered. The weight to be given to the sale is for the trier of fact. *See H/K Company v. Board of Equalization of the County of Lancaster*, 175 Neb. 268, 121 N.W.2d 382 (1963). The sale of the comparison

parcel occurred nearly two years after the assessment date and the sale was part of the settlement of an estate. The sale of the comparison property is not persuasive evidence that actual value of the subject property is less than \$268,900.

The Taxpayer argues that it is not rational to assign a \$66,200 contribution to value to the land component of the subject property. The Taxpayer suggested that the contribution to value of the land component should be \$25,000. The Taxpayer obtained that estimate by deducting an estimated contribution to value of improvements from an aggregate estimate of value. The technique used by the Taxpayer to estimate the contribution to value of the land component illustrates the importance of the aggregate estimate of value and the fact that if the aggregate value is correct then the allocation between land and improvements is not meaningful. Reallocation of actual value between land and improvements will not change the aggregate actual value determined by the County Board and affirmed now by the Commission.

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 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, 2008, is affirmed.
2. Actual value, for the tax year 2008, of the subject property is:

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Land value \$ 66,200.00

Improvement value \$202,700.00

Total value \$268,900.00.

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. 2008).
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 2008.
7. This order is effective for purposes of appeal on October 13, 2010.

Signed and Sealed. October 13, 2010.

Wm. R. Wickersham, 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.

Commissioner Hotz, concurring in result only.

I concur in affirming the determination of the County Board. The Taxpayer has not met the burden to produce competent evidence rebutting the presumption that the County Board faithfully preformed its official duties and acted upon sufficient competent evidence to justify its action. *Brenner v. Brenner Cty. Bd. Of Equal.*, 276 Neb. 275, 753 N.W.2d 802 (2008); *Ideal Basic Indus v. Nuckolls Cty. Bd. Of Equal.*, 231 Neb. 653, 437 N.W.2d 501 (1989). The Taxpayer's most persuasive evidence, Exhibit 10, was that of a fairly comparable property, but the evidence was deficient in at least three respects: (1) that the property was sold more than 23 months after the assessment date of January 1, 2008; (2) that the sale was that of an estate; and (3) that the taxable value of the alleged comparable property was nearly \$25,000 more than the taxable value of the subject property.

Robert W. Hotz, Commissioner