

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

LEE & BOBBIE FELDHAUS,)	
)	
Appellant,)	Case No. 09C 060
)	
v.)	DECISION AND ORDER
)	REVERSING 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 Lee & Bobbie Feldhaus ("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 November 22, 2010, pursuant to an Order for Hearing and Notice of Hearing issued September 20, 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 Hotz was excused. Commissioner Salmon was present. The appeal was heard by a quorum of a panel of the Commission.

Lee & Bobbie Feldhaus 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.

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2009, 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, 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: LOTS 1012 BLOCK 6 ANDERSON & CARLSONS ADDITION TO MEAD, Saunders County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$58,850.00	Included in Total	\$99,000.00
Improvement	\$72,000.00	Included in Total	\$17,000.00
Total	\$130,850.00	\$98,710.00	\$116,000.00

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 September 20, 2010, set a hearing of the appeal for November 22, 2010, at 1:00 p.m. CDT.

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	\$81,360.00
Improvement value	<u>\$17,000.00</u>
Total value	<u><u>\$98,360.00.</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) (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. “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 is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).
9. The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

10. Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property. See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).
11. 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).
12. 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).
13. 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).
14. 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).
15. 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).

16. 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).
17. 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).
18. The presumption disappears if there is competent evidence to the contrary. *Id.*
19. 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) (Reissue 2009).
20. 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).

21. "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).
22. 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).
23. 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).
24. "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).
25. 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).
26. 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).
27. 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 a commercial parcel improved with twenty (20) trailer pad sites with trailers located on 18 of these pad sites as of January 1, 2009. (E2:1-3).

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 and in addition, the Taxpayer has asserted that taxable value of the subject property as of January 1, 2009, is not equalized with the taxable value of other real property.

The Taxpayer only put the land value of the subject property in dispute. He did not put into dispute the improvement value of the subject property. The land value was determined by the County Board at \$99,000. (E1:1). The County Assessor had recommended to the County Board a value for the land component of \$58,850. (E1:1). There was not evidence explaining why the County Board chose not to adopt the recommendation of the County Assessor. The evidence did include a transcript of the meeting between the Taxpayer and the referee from the County Board. (E333:1-10). There was not evidence as to the recommendation of the referee to the County Board, if any. The determination of the County Board is without explanation and supporting evidence and the Commission finds the determined value to be arbitrary.

The Taxpayer put into evidence Exhibit 23 page 1 which tables the assessed valuation of alleged comparable parcels in the county. The Taxpayer testified that she "created a formula" making assumptions of the sizes of the alleged comparable properties since she could not determine the lot size from the property record files. The Commission notes that only one of the four alleged comparables is land from a trailer court, "Anderson". (E23:1 and E23:3-4). The Commission notes that the property record file for this alleged comparable is incomplete and does not show how the parcel was valued. The other three parcels are commercial parcels, but are not trailer courts. The Commission gives little weight to the contents of Exhibit 23 for the reasons stated above.

The Taxpayer provided Exhibit 36 page 1 which duplicates the evidence in Exhibit 23 and adds the same type of evaluation to the four parcels used by the County Assessor in Exhibit 3:1. The Commission notes that only one of the alleged comparables on Exhibit 36 page 1 is from Saunders County. The appraiser for the County Assessor testified that he did not know how the comparables from outside Saunders County were valued. The Commission refers to the alleged comparable from Wahoo Mobile Home Park in its analysis below, but gives little weight to the contents of Exhibit 36 page 1.

The Taxpayer provided Exhibit 35 page 1 which shows the same four alleged comparables in Exhibits 23 and 36, but shows two parcels for the Wahoo parcel. Also, the Anderson parcel is added for evaluation. The Taxpayer has divided the assessed land value for each of these parcels by the occupied pad sites to determine a value per occupied pad site. The Commission gives little weight to this exhibit except for the Wahoo Mobile Home Park which is included in the analysis below.

The appraiser for the County Assessor testified that the method used to value the land component of the subject property is to value each occupied pad site. The County Board valued the land component of the subject property at \$5,500 per site. He stated that the subject property was not valued on a per square foot basis by examining past land sales of mobile home parks. This testimony appears to be in contradiction with the evidence provided by the County as shown in Exhibit 2 page 2 which values the total land size of 69,696 square feet at \$.84 per square foot and then adjusts the amount by using an adjustment factor of 1.6823 for a total value of the land component for the subject property of \$99,000.

The County provided evidence of sales of trailer parks outside of Saunders County that "averaged" \$9,063 per occupied pad site. (E3:1). The use of averaged values to determine assessed valuation is not an accepted professional mass appraisal technique and is given little weight by the Commission. The County Assessor recommended to the County Board a value of \$58,850 for the land component of the subject property. This recommendation is \$3,269 per occupied pad site ($\$58,850$ recommended value of land component / 18 occupied pad sites = $\$3,269$ per occupied pad site). The appraiser for the County Assessor did not have an explanation as to why the County Board chose to determine that each occupied pad site was to be valued at \$5,500 ($\$99,000/18$ occupied pad sites = $\$5,500/\text{occupied pad site}$).

The Commission focuses its attention on the two other mobile home parks in Saunders County for which property record files were provided and which the parties agreed were comparable to the subject property. The Commission finds that the mobile home parks shown on Exhibits 5 and 6 for the Wahoo Mobile Home Park and the one shown in Exhibits 23 and 27 are comparable to the subject property. The appraiser for the County Assessor testified that on

January 1, 2009, there were twenty four (24) occupied pad sites in those parcels shown in Exhibits 5 and 6 of the Wahoo parcel which were assessed at \$5,595.80 per occupied pad site (land component assessed value of \$97,450 + \$36,850 /24 occupied pad sites = \$5,595.80). He stated that there were five (5) occupied pad sites on January 1, 2009 for the Anderson parcel which equals a value of \$4,520 per occupied pad site (land component assessed value of \$11,410 + \$11,200 = \$22,610/5 occupied pad sites = \$4,520 per occupied pad site). The Commission notes that the property record files for the Wahoo, Anderson Mobile Home Parks and the subject property do not show how the assessed values were determined by the County Assessor. The Commission's Order for hearing requires that the County Board provide information to include the method and calculations used to determine value of the subject property. It was only through the testimony of the appraiser for the County Assessor that the Commission received evidence as to how the subject property and the comparables were assessed.

“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).

Where “the discrepancy was not the result of an error of judgment but was a deliberate and intentional discrimination systematically applied” the Taxpayer’s right to relief is clear.

“The right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.” *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 44 N.W.2d 620, 626 (1984).

The Commission finds from its review of the evidence that the discrepancy between the 2009 assessed value of the subject property and the comparable parcels shown in Exhibits 23 and 27, the Anderson Mobile Home Park, is grossly excessive and the discrepancy was not the result of an error of judgement but was a deliberate and intentional discrimination systematically applied and the Taxpayer has a right to relief. The Commission finds that the equalized value of the subject property is \$4,520 per occupied pad site. The Commission finds that the equalized value of the land component of the subject property is \$81,360 ($\$4,520 \times 18$ occupied pad sites = \$81,360). The improvement component of the subject property is found to be as assessed, \$17,000, for a total equalized taxable value of \$98,360 (\$81,360 value of land component + \$17,000 value of improvement component = \$98,360).

“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.” *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983). 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 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.

The Commission finds that the Taxpayer has provided clear and convincing evidence that the County Board’s decision was arbitrary or unreasonable. The appeal of the Taxpayer is

granted to the extent that the equalized taxable value for the subject property for 2009 is \$98,360; \$81,360 for the land component and \$17,000 for the improvements.

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

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Land value	\$81,360.00
Improvement value	<u>\$17,000.00</u>
Total value	<u>\$98,360.00.</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 January 12, 2011.

Signed and Sealed. January 12, 2011.

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 (REISSUE 2009), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.