

**NEBRASKA TAX EQUALIZATION  
AND REVIEW COMMISSION**

JAMES E. FESER,	)	
	)	
Appellant,	)	CASE NO 05R-045
	)	
v.	)	DECISION AND ORDER AFFIRMING
	)	THE DECISION OF THE DOUGLAS
DOUGLAS COUNTY BOARD OF	)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,	)	
	)	
Appellee.	)	
	)	

The above-captioned case was called for a hearing on the merits of an appeal by James E. Feser 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 March 27, 2006, pursuant to a Notice and Order for Hearing issued January 11, 2006. Commissioners Wickersham, Warnes, and Lore were present. Commissioner Wickersham presided at the hearing.

James E. Feser, ("the Taxpayer") was present at the hearing without legal counsel.

The Douglas County Board of Equalization ("the County Board") appeared through legal counsel, James R. Thibodeau, a Deputy County Attorney for Douglas County, Nebraska.

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Supp. 2005) to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case is as follows.

**I.  
FINDINGS**

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described as Lot 8, Block O, Benson View Replat, Omaha, Douglas County, Nebraska, ("the subject property").
2. Taxable value of the subject property placed on the assessment roll as of January 1, 2005, ("the assessment date") by the Douglas County Assessor, value as proposed by the Taxpayer in a timely protest, and taxable value as determined by the County Board is shown in the following table:

Description: Lot 8, Block O, Benson View Replat, Omaha, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$8,400.00	\$-0-	\$8,400.00
Improvement	\$84,500.00	\$-0-	\$84,500.00
Total	\$92,900.00	\$66,900.00	\$92,900.00

3. The Taxpayer timely filed an appeal of the County Board's decision to the Commission.
4. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
5. An Order for Hearing and Notice of Hearing issued on January 11, 2006, set a hearing of the Taxpayer's appeal for March 27, 2006, at 3:00 p.m. CST.
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. For reasons stated below, 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.
8. Taxable value of the subject property for the tax year 2005 is:

Land value	\$ 8,400.00
Improvement value	<u>\$84,500.00</u>
Total value	<u>\$92,900.00.</u>

## II. CONCLUSIONS OF LAW

1. Subject matter jurisdiction of the Commission in this appeal is over all issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998)
2. The Commission has jurisdiction over the parties to this appeal.
3. “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).

4. 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).
5. Use of all of the statutory factors for determination of actual value is not required. All that is required is use of the applicable factors. *First National Bank & Trust of Syracuse v. Otoe Cty.*, 233 Neb. 412, 445 N.W.2d 880 (1989).
6. “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).
7. 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).
8. All taxable real property, with the exception of qualified agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004).
9. “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. Cons.*, art. VIII, §1
10. Equalization 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).

11. 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).
12. 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).
13. Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief." *Benyon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534, (1983).
14. The Taxpayer must establish by clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005) *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 621 N.W.2d, 523, (2001).
15. "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).
16. 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).

17. 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).
18. “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).

### **III. DISCUSSION**

The subject property is an improved residential parcel. The residence contains 1,014 square feet with an unfinished basement of equal size. (E3:4). The residence has an attached garage with 286 square feet. (E3:4). The residence was constructed in 1961 and the Taxpayer has been the sole owner of the parcel since that time. The Taxpayer testified that the parcel is not served by the municipal sewer, is on a paved street that is substandard and that the residence has not been remodeled or updated. The Taxpayer asserted that the subject property should be assessed at the same value as the residence next door at 5827 Read Street. The Taxpayer testified that the residence at 5827 Read Street had a double car garage and drive and that the parcel consisted of two lots. The Taxpayer testified that in his opinion the actual or fair market value of the subject property as of the assessment date was \$85,000.00. The Taxpayer based his opinion of actual or fair market value for the subject property on the assessed value of the residence at 5827 Read Street and a review of real estate transfers as reported in the newspaper. The Taxpayer did not produce the newspaper records for examination. A property record file for the parcel at 5827 Read Street was not produced.

The Taxpayer's opinion evidence of actual or fair market value of the subject property as of the assessment date is not clear and convincing proof that the decision of the County Board of Equalization was unreasonable or arbitrary.

Equalization is the process of comparing the actual value of a subject property to its assessed value and comparing that ratio with the identical ratio for comparable properties. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999). The Taxpayer produced evidence of the assessed value of one other parcel at 5827 Read Street. No evidence was produced concerning actual value of the parcel at 5827 Read Street other than its assessed value. A property record file for the property at 5827 Read Street was not produced for examination by the Commission. Examination of a property record file is necessary to determine whether the property is comparable to the subject property. The evidence received by the Commission does not support relief based on the Taxpayer's equalization claim.

The decision of the Douglas County Board of Equalization should be affirmed.

**V.  
ORDER**

**IT IS THEREFORE ORDERED THAT:**

1. The decision of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2005, is affirmed.
2. Taxable value of the subject property for the tax year 2005 is:

Land value	\$ 8,400.00
Improvement value	<u>\$84,500.00</u>
Total value	<u><u>\$92,900.00.</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 (Supp. 2005).
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 2005.
7. This order is effective for purposes of appeal March 29, 2006.

**Signed and Sealed.** March 29, 2006.

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Wm. R. Wickersham, Commissioner

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Susan S. Lore, Commissioner

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William C. Warnes, Commissioner

**SEAL**

**ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW CONTAINED IN NEB. REV. STAT. §77-5019 (SUPP. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.**