

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

WESTLAND BUILDING COMPANY,	)	
INC.,	)	
	)	Case Nos 05C-078 and 05C-079
Appellant,	)	
	)	DECISION AND ORDER AFFIRMING
v.	)	THE DECISIONS OF THE ADAMS
	)	COUNTY BOARD OF EQUALIZATION
ADAMS COUNTY BOARD OF	)	
EQUALIZATION,	)	
	)	
Appellee.	)	

The above-captioned cases were called for a hearing on the merits of appeals by Westland Building Company, Inc. to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Holiday Inn Express, 508 2nd Avenue, Kearney, Nebraska, on August 15, 2006, pursuant to a Notice and Order for Hearing issued June 2, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Willis D. Hunt, President, of Westland Building Company, Inc. ("the Taxpayer"), was present without legal counsel.

The Adams County Board of Equalization ("the County Board") appeared through legal counsel, Charles A. Hamilton, a Deputy County Attorney for Adams 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 the consolidated cases is as follows.

**I.  
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described as shown in the following tables ("the subject property").
2. Taxable value of each parcel of the subject property placed on the assessment roll as of January 1, 2005, ("the assessment date") by the Adams County Assessor, value as proposed by the Taxpayer in timely protests, and taxable value as determined by the County Board is shown in the following tables:

Case No. 05C-078

Description: Lots 36 and 37, Block 2, Bungalow Addition Hastings, Adams County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 23,255.00	\$	\$ 23,255.00
Improvement	\$ 77,885.00	\$	\$ 77,885.00
Total	\$101,140.00	\$55,000.00	\$101,140.00

Case No. 05C-079

Description: Lot 38, Block 2 Bungalow Addition, Hastings, Adams County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$11,710.00	\$	\$11,710.00
Improvement	\$10,850.00	\$	\$10,850.00
Total	\$22,560.00	\$10,000.00	\$22,560.00

3. The Taxpayer timely filed appeals of the County Board's decisions to the Commission.

4. The County Board was served with Notices in Lieu of Summons and duly answered those Notices.
5. The Taxpayer's appeals were consolidated for hearing by order of the Commission.
6. An Order for Hearing and Notice of Hearing issued on June 2, 2006, set a hearing of the Taxpayer's appeals for August 15, 2006, at 2:00 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. Taxable value of each parcel for the tax year 2005 is:

Case No.05C-078

Land value	\$ 23,255.00
Improvement value	<u>\$ 77,885.00</u>
Total value	<u>\$101,140.00</u>

Case No.05C-079

Land value	\$11,710.00
Improvement value	<u>\$10,850.00</u>
Total value	<u>\$22,560.00.</u>

## II. APPLICABLE LAW

1. "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).
2. 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).
  3. 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).
  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 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).

7. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
8. The presumption that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action 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. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
9. 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) (citations omitted)
10. The Commission can grant relief only if the Taxpayer establishes by clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005).
11. "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).

12. 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).
13. 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).
14. A corporate officer or other representative of an entity, must be shown to be familiar with the property in question and have a knowledge of values generally in the vicinity to be qualified to offer an opinion of value. *Kohl's Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb. App. 809, 638 N.W.2d, 881 (2002).

### **III. DISCUSSION**

The subject property consists of two parcels. The parcel described in Case No. 05C-78 consists of two lots improved with an office building and parking lot. (E5:80. The parcel described in Case No. 05C-79 is improved with a parking lot and shed. (E7:8). The Taxpayer's President stated on the protests filed with the County Board that the actual value of the three lots and improvements as of January 1, 2005 was \$65,000.00, their purchase price on November 16, 2004. If a sale of a parcel is to be considered evidence of its actual value the sale must be an arms length transaction. *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982). A single sale should not be excluded merely because it is a single sale. Rather, the fact that evidence of other sales is not presented goes to

the weight of the evidence. *Firethorn Inv. v. Lancaster County Bd. of Equalization*, 261 Neb. 231, 240, 622 N.W.2d 605, 611 (2001). (Citations Omitted).

An arms length transaction has been defined variously as: A transaction between unrelated parties under no duress. *The Appraisal of Real Estate*, Twelfth Edition, Appraisal Institute, p. 150 (2001); A sale between two or more parties, each seeking to maximize their positions from the transaction. 350 Neb. Admin. Code, ch 12 §002.21 (03/04); and as a sale in the open market between unrelated parties, each of whom is reasonably knowledgeable of market conditions and under no undue pressure to buy or sell. *Glossary of Real Estate Appraisal and Assessment*, International Association of Assessment Officers, p124 (1997). The Nebraska Supreme Court has determined that exposure on the open market is not required for the characterization of a sale as an arms length transaction. *Firethorn Investment v. Lancaster County Board of Equalization*, 261 Neb. 231, 605 N.W.2d 605 (2001).

The Taxpayer in this case is a corporation. The Taxpayer's President testified that he bought the Taxpayer corporation from the estate of its deceased founder. Subsequently the Taxpayer corporation bought the subject property from the estate in a separate transaction. The subject property had been the Taxpayer corporation's headquarters along with several other businesses controlled by its deceased founder or his family. The evidence shows that the Taxpayer corporation was being separated from a family group and that on separation it would need a headquarters. The subject property is now held by the Taxpayer corporation and used as its headquarters. Purchase of both the Taxpayer corporation and the subject property were financed by the estate. The Commission concludes that the seller of the subject property had a continuing interest in the success of the Taxpayer buyer. The Taxpayer's President had been

employed by the Taxpayer for 19 years prior to its sale to him. The evidence does not support a finding that purchase of the subject property by the Taxpayer was an arms length transaction or clear and convincing evidence of actual value as of the assessment date. No relief is possible if evidence presented by the Taxpayer does not support a determination of actual value different than the determination of the County Board.

The Taxpayer produced evidence that taxable value of the subject property had been determined based on its use as commercial property. The Taxpayer also produced evidence that adjoining parcels had been valued based on their use as residential property even though zoning designations would support use as commercial property as the highest and best use of the parcels. The Taxpayer did not claim before the County Board that the taxable value of the subject property was not equalized with the taxable value of other comparable property. Because the equalization issue presented during the hearing was not raised before the County Board, the Commission cannot consider that issue on appeal. *Harrison Square Partnership v. Sarpy County Board of Equalization*, 6 Neb. App. 454, 574 N.W.2d 180, (1998).

#### IV CONCLUSIONS OF LAW

1. The Commission has subject matter jurisdiction in this appeal.
2. 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).
3. The Commission has jurisdiction over the parties to this appeal.

4. The Taxpayer has not adduced sufficient, clear and convincing evidence that the decisions of the County Board are unreasonable or arbitrary, and the decisions of the County Board should be affirmed.

**V.  
ORDER**

**IT IS THEREFORE ORDERED THAT:**

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

Case No.05C-078

Land value	\$ 23,255.00
Improvement value	<u>\$ 77,885.00</u>
Total value	<u>\$101,140.00</u>

Case No.05C-079

Land value	\$11,710.00
Improvement value	<u>\$10,850.00</u>
Total value	<u>\$22,560.00.</u>

3. This decision, if no appeal is timely filed, shall be certified to the Adams County Treasurer, and the Adams 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 September 8, 2006.

**Signed and Sealed.** September 8, 2006.

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Wm. R. Wickersham, Commissioner

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Susan S. Lore, Commissioner

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Robert L. Hans, 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.**