

**NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

SHELLEY R. NIENHUESER, TRUSTEE,)	
SHELLEY R. NIENHUESER)	
REVOCABLE TRUST DATED APRIL 29,)	CASE NO 05R-190
2003,)	
)	DECISION AND ORDER AFFIRMING
Appellant,)	THE DECISION OF THE CHEYENNE
)	COUNTY BOARD OF EQUALIZATION
v.)	
)	
CHEYENNE COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Shelley R. Nienhueser, Trustee, Shelley R. Nienhueser Revocable Trust dated April 29, 2003 to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Days Inn at Scottsbluff in Scotts Bluff County, Nebraska, on June 14, 2006, pursuant to a Notice and Order for Hearing issued February 23, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Shelley R. Nienhueser, Trustee of Shelley R. Nienhueser Revocable Trust dated April 29, 2003, ("the Taxpayer"), was present at the hearing without legal counsel.

The Cheyenne County Board of Equalization ("the County Board") appeared through legal counsel, Paul B. Schaub, County Attorney for Cheyenne 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 2, South Country Club 1st Addition, Sidney, Cheyenne 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 Cheyenne 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:

Case No. 05R-190

Description: Lot 2, South Country Club 1st Addition, Sidney, Cheyenne County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 61,909.00	\$ 61,909.00	\$ 61,909.00
Improvement	\$437,502.00	\$318,091.00	\$401,845.00
Total	\$499,411.00	\$380,000.00	\$463,754.00

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 February 23, 2006, set a hearing of the Taxpayer's appeal for June 14, 2006, at 12:00 p.m. MDST.
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	\$ 61,909.00
Improvement value	<u>\$401,845.00</u>
Total value	<u>\$463,754.00.</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. 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).

10. "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).
11. 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).
12. 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).
13. "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 with a 28, 556 square foot lot. (E5:7). The residence was completed in 2004 and consists of 3,016 square feet with a 2,968 square foot partition finished basement. (E5:7 and 8). The residence has 4 bedrooms, 3.5 baths and an attached garage of 1,140 square feet. (E5:7 and 8).

The County Board determined actual value utilizing the cost approach. (E5). The Cost Approach includes six steps: "(1) Estimate the land (site) value as if vacant and available for development to its highest and best use; (2) Estimate the total cost new of the improvements as of the appraisal date, including direct costs, indirect costs, and entrepreneurial profit from

market analysis; (3) Estimate the total amount of accrued depreciation attributable to physical deterioration, functional obsolescence, and external (economic) obsolescence; (4) Subtract the total amount of accrued depreciation from the total cost new of the primary improvements to arrive at the depreciated cost of improvements; (5) Estimate the total cost new of any accessory improvements and site improvements, then estimate and deduct all accrued depreciation from the total cost new of these improvements; (6) Add site value to the depreciated cost of the primary improvements, accessory improvements, and site improvements, to arrive at a value indication by the cost approach.” *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, pp. 128 - 129. The cost approach is one of three approaches identified in Nebraska Statutes as a method to determine actual value. Neb. Rev. Stat. §77-112 (Reissue 2003). The cost approach is particularly useful in valuing new or nearly new improvements. *The Appraisal of Real Estate* 12th Edition, The Appraisal Institute, 2001, p. 63. The County Board’s determination was made after a reinspection of the subject property by the County Assessor.

Value of the lot is not in dispute. The lot was purchased in June of 2003 for \$69,910.69. (E9:1). Replacement cost new of the residence was estimated using Marshall and Swift (E5:7and 8). The County Board did not assign physical, functional, or economic depreciation or obsolescence. (E5:8). The County Assessor testified that depreciation estimates were determined based on a market analysis. The County Assessor also testified that a comparison of same property sales of residential property as shown in Exhibit 11 showed a strong and appreciating market for residential properties in Cheyenne County.

The Taxpayer testified that in her opinion actual value of the subject property as of the assessment date was \$380,000.00. The Taxpayer also testified that her opinion was the average value derived from two appraisals of the subject property. The appraisals on which the Taxpayer based her opinion were not received as evidence. The Commission is unable to give any weight to the testimony of the Taxpayer without an examination of the appraisals on which her opinion was based.

The Taxpayer's spouse testified that no homes had sold in Sidney, Nebraska, the location of the subject property, for more than \$317,000.00 and that the Taxpayer could not sell the home for its actual cost to construct. The Taxpayer's spouse was unable to testify with any reasonable degree of certainty concerning actual cost to construct the home. The Taxpayer has not produced evidence upon which the base a deduction for economic depreciation..

The Commission is unable to determine that actual value as of the assessment date as determined by the County Board was unreasonable or arbitrary.

**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	\$ 61,909.00
Improvement value	<u>\$401,845.00</u>
Total value	<u>\$463,754.00.</u>

3. This decision, if no appeal is timely filed, shall be certified to the Cheyenne County Treasurer, and the Cheyenne 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 June 21, 2006.

Signed and Sealed. June 21, 2006.

Wm. R. Wickersham, Commissioner

Susan S. Lore, Commissioner

Robert L. Hans, Commissioner

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.