

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

JOHN M. & PEGGY M. CHRIST,)	
TRUSTEES, CHRIST TRUST,)	
)	Case No 06R-036
Appellant,)	
)	DECISION AND ORDER AFFIRMING
v.)	THE DECISION OF THE CASS COUNTY
)	BOARD OF EQUALIZATION
CASS COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by John M. & Peggy M. Christ, Trustees, Christ Trust ("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 August 31, 2007, pursuant to an Order for Hearing and Notice of Hearing issued May 23, 2007. Commissioners Warnes, Salmon, and Hotz were present. Commissioner Warnes presided at the hearing.

John M. & Peggy M. Christ, Trustees of Christ Trust, were present at the hearing. No one appeared as legal counsel for the Taxpayer.

Nathan B. Cox, County Attorney for Cass County, Nebraska, appeared as legal counsel for the Cass County Board of Equalization ("the County Board").

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

The Commission is required by Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006) 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.
ISSUES**

The Taxpayer has asserted that actual value of the subject property as of January 1, 2006, 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, 2006.

**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 is described in the table below ("the subject property").
3. Actual value of the subject property placed on the assessment roll as of January 1, 2006, ("the assessment date") by the Cass 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: ROCK BLUFF -- TAX LOT 23 NE1/4 NW1/4 SECTION 16 -11-14 (1) (REPL AT PT BLK 1S - 2E),Cass County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 17,500.00	\$ 12,000.00	\$ 17,500.00
Improvement	\$30,624.00	\$20,000.00	\$30,624.00
Outbuilding	\$12,734.00	\$-0-	\$12,734.00
Total	\$60,858.00	\$ 32,000.00	\$ 60,858.00

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 May 23, 2007, set a hearing of the appeal for August 31, 2007, 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 2006 is:

Land value \$ 17,500.00
Improvement value \$ 30,624.00
Outbuilding \$ 12,734.00
Total value \$ 60,858.00.

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III. APPLICABLE LAW

1. Subject matter jurisdiction of the Commission in this appeal is over 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. “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. 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).

5. “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).
6. 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).
7. 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. 2006).
8. 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).
9. 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).
10. 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).

11. The Commission can grant relief only if there is clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See, Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2006), and 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, 168, 580 N.W.2d 561, 566 (1998).

17. A Taxpayer, who only produced evidence that was aimed at discrediting valuation methods utilized by 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. Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject 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).

IV. ANALYSIS

This is an appeal by the Taxpayers of the taxable value assessed upon the subject property for 2006. The Taxpayers do not dispute the valuation assessed for the subject property's land or outbuildings. The Taxpayers dispute the taxable value of the other improvement which consists of a 539 square foot house which the Taxpayer testified was "... a cabin with an enclosed porch." A major component of the Taxpayer's concern is that the "cabin" does not meet the criteria of a single family residence and is therefore not classified or valued correctly.

The subject property was purchased by the Taxpayers in 1993 for \$15,000. It consists of 1.6 acres of land, a "cabin with a porch," and a 60' x 40' pole shed. Only the taxable value of the "cabin" is in dispute which was valued at \$30,624. Improvements which the Taxpayer has

made to the "cabin" since purchase include a new roof and a new screened in porch built in 1995, which was then enclosed in 1997 or 1998. The Taxpayer referred to these later improvements as a "little sun porch." The Assessor's notes on Exhibit 5:3 show other improvements believed by the Assessor to have been made by the Taxpayer to the subject property. The Taxpayer testified that his opinion of fair market value for the subject property as of January 1, 2006, was \$3,000. This value figure takes into account the cost to get it removed from the land upon sale. The Taxpayer testified that the "cabin" has historical value in that it is the last original building remaining of the original town of Rock Bluff. He did not intend to destroy it or remove it during the term of his ownership.

The Taxpayer testified that it was his belief that the "cabin" should be classified as something other than a single family residence. His reasons for believing this were that he and his wife only make use of it once a year for a "family picnic." In addition, he and his wife's reasons include his belief that it does not have a continuous block foundation, but rather rests on "logs and rocks," no closets in the bedrooms, no interior walls to the ceilings and it has an unfinished basement. An additional point made by the Taxpayer in support of his belief that the "cabin" is not a single family residence is that the building does not have heated water.

The County Assessor testified that there were no other classifications of real property in Cass County other than the three major land use classifications of residential, commercial and agricultural. He stated that there were no other subclassifications within residential other than single family which would apply to the subject property. The Assessor further testified that he valued the subject property using the cost approach. Exhibit 5:1 to 3. It was his testimony that he entered the least expensive foundation type into the computer software program regardless of

whether the basement was built of 8" cinder blocks or some other building materials. The Assessor further testified that he entered into the computer software program all of the correct data required using the Marshall and Swift Cost Tables and that his opinion of Actual Value was as shown on Exhibit 4:1.

The Taxpayer did not provide any sales of comparative properties testifying that there were no other properties comparable to the subject property that had sold.

A taxpayer who offers no evidence that the subject property is valued in excess of its actual value and who only produces evidence that is aimed at discrediting the valuation methods utilized by county assessor fails to meet his or her burden of proving that the value of the property was not fairly and proportionately equalized or that valuation placed upon the 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).

The Taxpayer has not shown by clear and convincing evidence that the decision of the County Board was arbitrary or unreasonable. The appeal of the Taxpayer is denied.

**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 taxable value of the subject property as of the assessment date, January 1, 2006, is affirmed.

2. Actual value of the subject property for the tax year 2006 is:

Land value	\$ 17,500.00
Improvement value	\$ 30,624.00
<u>Outbuildings</u>	<u>\$ 12,734.00</u>
<u>Total value</u>	<u>\$ 60,858.00.</u>

3. This decision, if no appeal is timely filed, shall be certified to the Cass County Treasurer, and the Cass County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).

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 2006.

7. This order is effective for purposes of appeal on October 2, 2007.

Signed and Sealed. October 2, 2007.

Nancy J. Salmon, Commissioner

Robert W. Hotz, 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 (CUM. SUPP. 2006). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.