

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

WILLIAM F. BAEDER III,)	
)	
Appellant,)	Case No 06R-090
)	
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 William F. Baeder III ("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 July 27, 2007, pursuant to an Order for Hearing and Notice of Hearing issued May 18, 2007. Commissioners Wickersham, Warnes, and Salmon were present. Commissioner Wickersham presided at the hearing.

William F. Baeder III, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Thomas S. Barrett, a Deputy County Attorney for Douglas County, Nebraska, appeared as legal counsel for the Douglas 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 as Lot 138, Block O, Ridgefield 2nd, Omaha, Douglas County, Nebraska, ("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 Douglas 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: Lot 138, Block O, Ridgefield 2nd, Omaha, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 33,900.00	\$In Total	\$ 33,900.00
Improvement	\$424,000.00	\$In Total	\$391,400.00
Total	\$457,900.00	\$356,330.00	\$425,300.00

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 18, 2007, set a hearing of the appeal for July 27, 2007, at 9:00 a.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	\$ 33,900.00
Improvement value	<u>\$391,400.00</u>
Total value	<u>\$425,300.00.</u>

**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

The subject property is an improved residential parcel. The residence on the subject property was built in 1990. The residence is a single story ranch style with 2,794 square feet on the main floor, a full basement and an 825 square foot attached garage. (E1:11). 1,198 square feet of the basement are finished. (E11:3).

The Taxpayer and the County Board offered information for parcels each considered comparable to the subject property. “Comparable properties” share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 98. Information related to comparability factors, sales dates and sales prices are shown in the following table.

Descriptor	Subject	Comp 1	Comp 2	Comp 3	Comp 4
Exhibit	12:1,6	13:1,2,6	13:7,8,12	13:13,14,18	8:2
Location	12811 Layfayett	1217 N 129 CR	13115 Charles	1405 N 130	1214 N131
Condition	Good	Good	Good	Good	Good
Quality	V Good	V Good	V Good	V Good	V Good
Yr Built	1990	2000	1988	1984	1989
Ext Wall 1	Brick	Brick	Frame Siding	Frame	Frame Siding
Base Area	2794	2164	2078	2203	1825
Total Area	2794	2164	2078	2203	1825
Style	Ranch	Ranch	Ranch	Ranch	Ranch
Roof	Wd Shake				Wd Shake
HVAC	Central Air	Central Air	Central Air	Central Air	Central Air
Basement	2794	2152	2078	2203	1849
Part Finish	1198	1497	1800	1200	925
Walkout		1	1		
Bedrooms	3	1	4	3	3
Bathrooms	3.5	3.5	3.5	3.5	2
Garage Type	Attach	Attach	Attach	Attach	Attach
Garage Area	585	1365	744	840	600
Misc Imp	336 sq ft wood deck	180 sq ft sun rm	240 sq ft wood deck	220 sq ft sun rm	
Sale Date		8/29/03	11/7/05	6/8/06	3/23/06
Sale Price		\$549,000	\$300,000	\$289,000	\$216,000

Comparables 1 and 2 were considered by both the Taxpayer and the County Board to be comparable to the subject property. (E1:10, E3, E5, and E11:5). When using “comparables” to determine value, similarities and differences between the subject property and the comparables must be recognized. *Property Assessment Valuation*, 2nd Ed., 1996, p.103. The Taxpayer however focused on the Actual Value/SF as shown in the records of Douglas County. The approach utilized by the Taxpayer may be invited by the Assessor Report produced by an appraiser for the County indicating that the sales comparison approach was used to determine value for the subject property with a grid that shows a comparison of Actual Values/SF. (See E1:7 and 10 and E11:2 and 5). Using “comparables” to determine value, requires recognition of similarities and differences between the subject property and the comparables. *Property Assessment Valuation*, 2nd Ed., 1996, p.103. The County Board determined actual value of the subject property by a summing of values attributed to various attributes of the residence and then adding a land value. (E2:4 and E12:6). The approach used by the County Assessor to make a determination of value shown in Exhibits 2 and 12 is not the sales comparison approach.

The Taxpayer contends that the actual or fair market value of the subject property should be determined based on the taxable or “assessed” value per square foot of the other parcels. A Taxpayer wishing to use taxable “assessed” values per square foot to prove actual or fair market value must show that: the approach is a professionally approved mass or fee appraisal approach; appropriate application of the approach; and reliability of the evidence.

A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes. Neb. Rev. Stat. §77-112

(Reissue 2003). The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods. *Id.* Comparison of assessed values per square foot is not identified in the Nebraska Statutes as an accepted approach for a determination of actual value for purposes of mass appraisal. *Id.* Because the assessed value per square foot method is not identified in statute proof of its professional acceptance as an appraisal approach would have to be produced. *Id.* No evidence has been presented to the Commission that comparison of assessed values per square foot is a professionally accepted mass or fee appraisal approach.

Even if assessed value per square foot was a professionally approved approach with which to make a determination of value, difference in the sizes of the subject property and the comparables show its limitations in the present case. Use of the approach without adjustments for size would necessarily make the assumption that value per square foot is rateable and uninfluenced by size. If for example it is determined that a 1,000 square foot residence has an actual value of \$100 per square foot or \$100,000, then a 2,000 square foot residence would have an actual value of \$200,000, with all other aspects of the residences being equal. A quick look at the gross sales prices of parcels offered as comparables shows that is not a correct assumption. For example comparable 2 described above sold in 2005 for \$300,000 or \$144.37 per square foot ($\$300,000 \div 2078 = \144.37). (E13:8). Comparable 3 above with a smaller residence is a parcel largely comparable to comparable 2 . Comparable 3 sold in 2006 for \$289,000 or \$131.36 per square foot ($\$289,000 \div 2203 = \131.16). Comparable 4 as described above with a smaller residence is a parcel largely comparable to comparable 2 . Comparable 4 in 2006 for \$216,000 or \$118.36per square foot ($\$216,000 \div 1825 = \118.36) . Sales prices

may have been influenced by factors other than size, however, it is impossible to ignore size as a factor given the wide price differentials and the differing values per square foot. Value per square foot as derived from sales that is not a scalable or constant value on which to base a determination of value. There are sufficient differences in size alone between the subject property and the parcels offered as comparables to reach a conclusion that unadjusted per square foot values as derived from sales should not be applied to the subject property.

The Taxpayer has not shown by clear and convincing evidence that the decision of the County Board was unreasonable or arbitrary, relief cannot be granted.

**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 \$ 33,900.00

Improvement value \$391,400.00

Total value \$425,300.00.

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 (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 August 2, 2007.

Signed and Sealed. August 2, 2007.

Wm. R. Wickersham, Commissioner

Nancy J. Salmon, 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.