

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

JAMES F. & EVONNE MAGUIRE,)	
)	
Appellant,)	Case No 06R-420
)	
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 F. & Evonne Maguire ("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 January 17, 2008, pursuant to an Order for Hearing and Notice of Hearing issued November 15, 2007. Commissioners Warnes, Salmon, and Hotz were present. Commissioner Warnes presided at the hearing.. Commissioner Wickersham was excused from participation by the presiding hearing officer. The appeal was heard by a panel of three commissioners pursuant to 442 Neb. Admin. Code ch.4 §11 (10/07).

James F. & Evonne Maguire were 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.

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2006, is not equalized with the taxable value of other real property. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining the equalized taxable value of the subject property is unreasonable or arbitrary;

Whether the equalized taxable value of the subject property was determined by the County Board in a manner and an amount that is uniform and proportionate as required by Nebraska's Constitution in Article VIII §1; and

The equalized taxable 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 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:

Description: LONERGAN WOODS LOT 1 BLOCK 0 IRREG 1.27 AC, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 95,300.00	\$Included in Total	\$ 90,000.00
Improvement	\$333,300.00	\$Included in Total	\$295,000.00
Total	\$428,600.00	\$309,500.00	\$385,000.00

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 November 15, 2007, set a hearing of the appeal for January 17, 2008, at 3:00 p.m. CST.
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. The hearing was held before a panel of the Commission. 442 Neb. Admin. Code, ch 4 §11.01 (10/07).

9. Actual value of the subject property as of the assessment date for the tax year 2006 is:

Land value	\$ 90,000.00
Improvement value	<u>\$295,000.00</u>
Total value	<u>\$385,000.00.</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 on the appealed decision. *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 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. “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. Const. art. VIII, §1.
9. Equalization to obtain proportionate valuation 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).
10. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity. *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

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. In the evaluation of real property for tax purposes, where buildings and improvements are taxable as a part of the real estate, the critical issue is the actual value of the entire property, not the proportion of that value which is allocated to the land or to the buildings and improvements by the appraiser. *Bumgarner v. Valley County*, 208 Neb. 361, 303 N.W.2d 307 (1981).
14. If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgement. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity. *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).
15. 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), *City of York v York County Bd. of Equalization*, 266 Neb. 297, 664 N.W. 2d 445 (2003).

16. 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 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).
17. 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).
18. Once the presumption of correctness has been rebutted by the Taxpayer, the Taxpayer must then prove that the decision of the County Board was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2006), *City of York v York County Bd. of Equalization*, 266 Neb. 297, 664 N.W. 2d 445 (2003).
19. If the presumption disappears, from that point forward the reasonableness of the valuation becomes one of fact based on all of the evidence presented. *Garvey Elevators, Inc. v Adams County Bd. Of Equalization*, 261 Neb. 130, 641 N.W. 2d 518 (2001).

20. Proof that the action of the County Board was unreasonable or arbitrary must be made by clear and convincing evidence. See, e.g. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
21. "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).
22. 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).
23. 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).
24. "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).
25. 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, 580 N.W.2d 561 (1998).
26. 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).

27. 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 appeal is for 2006 and includes the issues of both valuation, that the actual value of the subject property as of January 1, 2006, is less than actual value as determined by the County Board, and equalization, that the taxable value of the subject property as of January 1, 2006, is not equalized with the taxable value of other real property.

The subject property is a residential parcel on which a 2,136 square foot house was built in 2005. The house is a ranch style rated very good in quality and good in condition.

The Taxpayer testified that her concerns about the subject property were summarized in writing on Exhibit 6:1, which was attached to the protest. The first issue addressed by the Taxpayer was her belief that the house was not completed by January 1, 2006. She testified that the County had valued the subject property for 2005 on the basis that it was 70 % complete which resulted in an assessed taxable value for 2005 of \$242,900. Her calculation for 100% valuation using the 2005 assessment would be \$347,000. This analysis leaves out any further construction between the January 1, 2005 assessment date and the January 1, 2006 assessment date applicable to this appeal. The Taxpayer testified that while the “bang door” was still on

the house, it had been painted and may have caused the County to be mistaken that the house was completed. The Taxpayer estimated that the subject property was only 60 - 65% complete on January 1, 2006; however this estimate contrasts with the belief of the County that 70% was completed a year prior. Testimony by the Taxpayer that the subject property was still not complete as of January 1, 2006 is evidenced by Exhibit 7 which were bills paid in 2006 for work not completed by January 1, 2006. The Commission finds that the Taxpayer did not show by competent evidence that the subject property was not completed by January 1, 2006 or to what extent the property may have been partially completed.

The Taxpayer provided Exhibit 8:1 as a table to show a comparison of the subject property with other parcels suggested to be comparable. The Taxpayer's testimony confirmed that the analysis of the "total square feet" for each home added all of the finished square footage in the houses suggested to be comparable. This method of comparison does not take into account that the County values the finished square footage differently for the first floor living area versus the finished basement area or a second floor as shown on the property record card for the subject property, Exhibit 36. This mixing of different valued square footage is then compounded by attempting to make a comparison of the difference in cost per square foot as shown on Exhibit 12:1. In addition, Table Exhibit 8:1 and Table Exhibit 12:1 do not compare and adjust for "add ons" between the suggested comparable properties and the subject property. An example of the differences in the suggested comparable properties can be seen by comparing the "add ons" for the subject property shown on Exhibit 3:6 and the "add ons" for that parcel shown on Exhibit 10:4.

The Taxpayer testified that the houses most comparable to the subject property and evidence of her position regarding the valuation and equalization issue were the “gold colored” properties on Exhibit 8:1. These properties are located at 13425 73 PA and 7106 Northland Dr. Both of these alleged comparable parcels are located within one - half mile from the subject property. The property record file for the first property located at 13425 73 PA is Exhibit 10. The property record file for the second property located at 7106 Northland Dr is Exhibit 11. The property record file for the subject property is Exhibit 9. A table comparing the attributes of each property is shown below.

	Subject Property	13425 73 PA	7106 Northland Dr
Year Built	2005	1997	1987
Style	Ranch	Ranch	Raised Ranch
Quality	Very Good	Good	Good
Condition	Good	Good	Average
Sq. Ft.	2,136	2,023	2,250
Basement	2,136	2,023	2,012
Fin. Bsmt.	1,576	1,280	1,600
Fireplace Gas	3	1	1 Metal

The above comparison shows that there are material differences between the subject property and the suggested comparables. Most notably the Commission notes the disparity in the year built, quality and condition. In addition, there are numerous differences in the “add ons” shown for each property. The Commission cannot discern what monetary difference in assessment might be caused by the differences noted. The Taxpayer has attempted to compare the two properties above to the subject property without making or taking into account

adjustments that would be necessary to allow a comparison. The Commission finds that the two properties stated by the Taxpayer to be the most comparable to the subject property are not comparable.

The Taxpayer did not provide evidence of payments made for the building of the subject property. Her explanation was that there were many repairs and “rip outs” needed to correct structural inadequacies and that there were still several building and code violations that had not been repaired. She testified that she did not want to have the actual cost for the building of the house or the existing building inadequacies to be a matter of public record. Her requested value as of January 1, 2006 can be seen on Exhibit 5:3, the Form 422, in the amount of \$309,500; however, she testified during the hearing that her opinion of the actual value of the subject property as of January 1, 2006 was \$347,000. The basis for the latter value was discussed previously.

From the evidence of the Taxpayer, the Commission can see that an inspection by the County would assist in validating whether the subject property has been completed, the accuracy of the physical attributes of the parcel, and the quality and condition. Testimony by the Taxpayer confirmed that the County had left a card requesting that she contact them to arrange an inspection. There was no explanation by the Taxpayer as to why she did not make arrangements for the inspection.

The Taxpayer has not provided competent evidence to rebut the presumption that the County Board was correct in their decision. Similarly, the Taxpayer has not by clear and convincing evidence shown that the County Board’s decision 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 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	\$ 90,000.00
Improvement value	<u>\$295,000.00</u>
Total value	<u><u>\$385,000.00.</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 (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 February 8, 2008.

Signed and Sealed. February 8, 2008.

Nancy J. Salmon, Commissioner

Robert W. Hotz, Commissioner

William C. Warnes, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.