

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

THELANDER, LLC,	)	
	)	
Appellant,	)	Case No. 06C-472
	)	
v.	)	DECISION AND ORDER AFFIRMING
	)	THE DECISION OF THE LANCASTER
LANCASTER 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 Thelander, LLC ("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 March 18, 2008, pursuant to an Order for Hearing and Notice of Hearing issued December 10, 2007. Commissioners Wickersham, Warnes, Salmon, and Hotz were present. Commissioner Wickersham presided at the hearing.

Redge Johnson, Managing Partner/President of the Taxpayer was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Michael E. Thew, a Deputy County Attorney for Lancaster County, Nebraska, appeared as legal counsel for the Lancaster County Board of Equalization ("the County Board").

The Commission reconstructed portions of its case file and took statutory notice of the case file as reconstructed.

The Commission 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 Lancaster 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: Lots 7 thru 10, Block 30, Kinneys O St Add, Lincoln, Lancaster County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$153,360.00	\$In Total	\$In Total
Improvement	\$306,540.00	\$In Total	\$In Total
Total	\$459,900.00	\$234,000.00	\$388,000.00

4. An appeal of the County Board's decision was filed with the Commission.
5. An Order for Hearing and Notice of Hearing issued on December 10, 2007, as amended by an Order issued on February 8, 2008, set a hearing of the appeal for March 18, 2008, at 9:00 a.m. CDST.
6. Actual value of the subject property as of the assessment date for the tax year 2006 is:

Case No. 06C-472

Land value	\$ In Total
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Improvement value	<u>\$ In Total</u>
Total value	<u>\$388,800.00.</u>

### **III. APPLICABLE 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. “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. The Statutes governing the Commission create a presumption that the County Board has faithfully performed its official duties and has acted upon sufficient competent evidence to justify its actions. *City of York v. York Cty. Bd of Equal.*, 266 Neb. 297, 664 N.W.2d 445 (2003).
16. The presumption remains until there is competent evidence to the contrary presented. *Id.*

17. Competent evidence means evidence which tends to establish the fact in issue. *In re Application of Jantzen*, 245 Neb. 81, 511 N.W.2d 504 (1994).
18. If the presumption is overcome, the reasonableness of the valuation fixed by the County Board becomes one of fact based on all of the evidence presented. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W.2d 518 (2001).
19. 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).
20. The Commission can grant relief only if the action of the County Board was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2006).
21. 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).
22. "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).
23. 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).

24. 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).
25. 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).
26. 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).
27. 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).
28. Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. Cf. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981); *Arenson v. Cedar County*, 212 Neb. 62, 321 N.W.2d 427 (1982), (determination of equalized values); and *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965), (determination of actual value).

#### **IV. ANALYSIS**

The subject property is an improved commercial parcel. (E6:2). A 14,200 square foot structure is located on the subject property. The west half of the 7,100 square feet structure on the subject property has its own free standing walls. The east one-half also contains 7,100 square feet but shares a common wall on its west side with the west one-half and a common wall on its east side with a structure on an adjoining parcel. The west one-half of the structure on the subject property is used for office space. The east half of the structure is used for parking and storage. The structure was built in 1930. (E6:2). The subject property is leased by the Taxpayer to a business controlled by the Taxpayer's Managing Partner/President. The lease with renewals and amendments has been in effect since 1979. A copy of the lease was not introduced. The testimony of the witnesses is sufficient for the Commission to find that the lease requires the tenant to pay all property taxes, costs of insurance and costs of day to day maintenance. The Taxpayer acquired the subject property in 2005 for \$400,000.00 after exercise of an option to purchase contained in the lease. The lease of the subject property remained in effect after its purchase by the Taxpayer. The tenant has improved the subject property for its use. The tenant's improvements may not be removed at termination of the lease.

The Taxpayer argued that an estimate of actual value made by a referee acting on behalf of the County Board using the income approach was more appropriate than actual value as determined by the County Board. The County Board based its determination of actual value on an estimate of actual value made by a coordinator of its referees using the income approach. (E2:25 and E1:1).

The Income Approach can be defined as “a set of procedures through which an appraiser derives a value indication for an income-producing property by converting its anticipated benefits (cash flows and reversion) into property value. This conversion can be accomplished in two ways. One year’s income expectancy can be capitalized at a market-derived rate or at a capitalization rate that reflects a specified income pattern, return on investment, and change in the value of the investment. Alternatively, the annual cash flows for the holding period and the reversion can be discounted at a specified yield rate.” *The Dictionary of Real Estate Appraisal*, Fourth Edition, Appraisal Institute, p.143, (2002). The steps required for use of the income approach with direct capitalization may be summarized as (1) estimate potential gross income; (2) deduct estimated vacancy and collection loss to determine effective gross income; (3) deduct estimated expenses to determine net operating income; (4) divide net operating income by an estimated capitalization rate to yield indicated value. *The Appraisal of Real Estate* 12<sup>th</sup> Edition, The Appraisal Institute, 2001, pp. 493 - 494. A variety of techniques may be used to quantify various components of any application of the approach. *Supra*, at chs 20-24, (2001).

Three major methods are used to develop an indication of value using the income approach: direct capitalization; yield capitalization; and a discounted cash flow analysis. *Id.* The direct capitalization method produces an indication of value based on a single year’s estimated income. *Supra*, at 529. A yield capitalization method requires an analysis of income and expected returns over multiple years. *Supra*, at 549. Discounted cash flow analysis is a refinement of the yield capitalization method in which a reversionary value is added to the indicated value of the income stream. *Supra*, at 569. A reversionary value is added on the assumption that the asset producing an income stream still exists and has value at the end of the

period. *Id.* That value is discounted to present value as of the valuation date and added to the value of the income stream. *Supra*, at ch 24.

An estimate of value using the income approach may also be obtained based on gross income and a gross income multiplier. *Supra* at 546-547. A gross income multiplier can be obtained by dividing the sale price of comparable parcels by their potential gross incomes. *Supra* at 547. The gross income of the property for which value is to be estimated is then multiplied by the gross income multiplier. *Supra* at 546-547.

The referee's estimate of actual value was based on the income derived from the lease of the subject property to an entity controlled by the Taxpayer's Managing Partner/President. A licensed appraiser employed by the Lancaster County Assessor ("Appraiser") testified that actual rentals should not be used to determine income for the subject property. The licensed appraiser, who had acted as a coordinator of referees for the County Board ("Coordinator"), testified that actual rentals should not be used to determine income for the subject property. The referee's reliance on actual income of the subject property is not in accordance with generally accepted appraisal practice. "The income and expenses that are proper and acceptable for income tax purposes are not the same as those that are appropriate for the income approach. Only the reasonable and typical expenses necessary to support and maintain the income-producing capacity of the property should be allowed." *Property Assessment Valuation*, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, p. 204. That position has also been adopted by Nebraska Courts. See, *In re Assessment of OL & B Ry. Co.*, 213 Neb. 71, 75-76, 327 N.W.2d 108, 111 (1982) and *Spencer Holiday House, Inc., v. Board of Equalization of Hall*

*County*, 220 Neb. 607, 371 N.W.2d 286, (1985). The Taxpayer's reliance on the estimate of value as determined by the referee is not persuasive.

The Coordinator testified that the rental rate he used to develop an estimate of value was based on his knowledge of lease rates in downtown Lincoln. The Coordinator also testified that the capitalization rate used was appropriate if a tenant was responsible for payment of taxes, insurance and maintenance. He further testified that the only expenses considered were management and a reserve for replacement because other expenses were borne by the tenant.

The Appraiser testified that after review he believed actual value of the subject property as of the assessment date was in a range of \$390,000.00 to \$430,000.00. Actual value as determined by the County Board was \$388,000.00. (E1:1).

There is no competent evidence that the County Board failed to faithfully perform its official duties and to act on sufficient competent evidence to justify its determination of actual value.

There is no clear and convincing evidence that the County Board's determination of actual value was arbitrary or unreasonable.

The Taxpayer in its protest asserted that the taxable value of the subject property was not equalized with other comparable and similar property within the county. 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). The Taxpayer provided information concerning the taxable or assessed value of the five parcels. No evidence of actual value was provided for those parcels. The Commission is unable to determine whether or not the five

parcels submitted for consideration are assessed at 100% of actual value or some other percentage. In addition the Appraiser testified that the five parcels submitted for consideration by the Taxpayer were not comparable to the subject property because the subject property is improved with a single story structure and the five parcels submitted for consideration by the Taxpayer were all improved with multistory structures.

There is no competent evidence that the County Board failed to faithfully perform its official duties and to act on sufficient competent evidence to justify its determination of equalized taxable value.

There is no clear and convincing evidence that the County Board's determination of equalized taxable value was arbitrary or unreasonable.

## **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 produced competent evidence that the County Board failed to faithfully perform its official duties and to act on sufficient competent evidence to justify its actions.
4. 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	\$	In Total
Improvement value	<u>\$</u>	<u>In Total</u>
Total value		<u><u>\$388,800.00.</u></u>
3. This decision, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer, and the Lancaster 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 April 30, 2008.

**Signed and Sealed.** April 30, 2008.

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Robert W. Hotz, Commissioner

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Nancy J. Salmon, Commissioner

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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.**

Commissioner Wickersham concurring in the result.

The Commission is an administrative agency of state government. See, *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000). As an administrative agency of state government the Commission has only the powers and authority granted to it by statute. Id. The Commission is authorized by statute to review appeals from decisions of a county board of equalization, the Tax Commissioner, and the Department of Motor Vehicles. Neb. Rev. Stat. §77-5007 (Supp. 2007). In general the Commission may only grant relief on appeal if it is shown that the order, decision, determination, or action appealed from was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(8) (Supp. 2007).

Nebraska courts have held that the provisions of section 77-5016(8) of Nebraska Statutes create a presumption that the County Board has faithfully performed its official duties and has acted upon sufficient competent evidence to justify its actions. *City of York v. York County Board of Equalization*, 266 Neb. 297, 664 N.W.2d 445 (2003). The presumption as cited in *York* has roots in the early jurisprudence of Nebraska. See, *State v. Savage*, 65 Neb. 714, 91 N.W. 716 (1902) (citing *Dixon Co. v. Halstead*, 23 Neb. 697, 37 N.W. 621 (1888) and *State v. County Board of Dodge Co.* 20 Neb. 595, 31 N.W. 117 (1887)). The presumption functioned as a standard of review. See, e.g. *Gamboni v. County of Otoe*, 159 Neb. 417, 67 N.W.2d 492 (1954).

Roots of the Commission's statutory standard of review are not as old. As early as 1903 Nebraska Statutes provided for review of County Board valuation decisions by the district courts. Laws 1903, c. 73 §124. The statute providing for review did not state a standard for that review. Id. In 1959 the legislature provided a statutory standard of review. Neb Laws 1959, LB 55 §3. The statutory standard of review required the district Court to affirm the decision of the county board unless the decision was arbitrary or unreasonable or the value as established was too low. Id. The statutory standard of review was codified in section 77-1511 of Nebraska Statutes. Neb. Rev. Stat. §77-1511 (Cum. Supp. 1959). Section 77-1511 of Nebraska Statutes was made applicable to reviews by the Commission in 1995. Neb Laws 1995, LB 49 §153. In 2001 section 77-1511 of Nebraska Statutes was repealed. Neb Laws 2001, LB 465 §12. After repeal of section 77-1511 the standard for review in most appeals to the Commission was stated in section 77-5016 of Nebraska Statutes.

Many appeals pursuant to section 77-1511 were decided without reference to the statutory standard of review after its adoption. See, e.g. *Grainger Brothers Company v. County Board of Equalization of the County of Lancaster*, 180 Neb. 571, 144 N.W.2d 161 (1966). The first case explicitly citing the statutory standard of review as the basis for a decision was *Loskill v. Board of Equalization of Adams County*, 186 Neb. 707, 185 N.W.2d 852 (1971). In *Hastings Building Co., v. Board of Equalization of Adams County*, 190 Neb. 63, 206 N.W.2d 338 (1973), the court acknowledged that two standards of review existed; one statutory, and the other judicial stated as a presumption that the county board of equalization faithfully performed its official duties and acted upon sufficient competent evidence. No attempt was made by the *Hastings* Court to reconcile the two standards of review.

The possible results from application of the judicial presumption and the statutory standard of review are: (1) the judicial presumption is not overcome and the statutory standard is not overcome; (2) the judicial presumption is overcome and the statutory standard is not overcome; (3) the judicial presumption is not overcome and the statutory standard is overcome; (4) and finally the judicial presumption is overcome and the statutory standard is overcome. The first possibility does not allow a grant of relief, neither standard of review has been met. If the judicial presumption is overcome the statutory standard remains. See, *City of York v. York County Bd of Equal.*, 266 Neb. 297, 664 N.W.2d 445 (2003). The second possibility does not therefore allow a grant of relief even though the judicial presumption is overcome. The third possibility requires analysis. The judicial presumption and the statutory standard of review are different legal standards, one remaining after the other has been met. See. *City of York Supra*. The burden of proof to overcome the judicial presumption is competent evidence. *City of York Supra*. Clear and convincing evidence is required to show that the County Board's decision was unreasonable or arbitrary. See, e.g. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002). Competent evidence that the County Board failed to perform its duties or act upon sufficient competent evidence is not always evidence that the County Board acted unreasonably or arbitrarily because the statutory standard of review remains even if the judicial presumption is overcome. *City of York Supra*. Clear and convincing evidence that a County Board's determination, action, order, or decision was unreasonable or arbitrary, as those terms have been defined, may however overcome the judicial presumption that the County Board faithfully discharged its duties and acted on sufficient competent evidence. In any event the statutory standard has been met and relief may be granted. Both standards of

review are met in the fourth possibility and relief may be granted. Each analyses of the standards of review allowing a grant of relief requires a finding that the statutory standard has been met.

Use of the judicial presumption as a standard of review has been criticized. See, G. Michael Fenner, *About Presumptions in Civil Cases*, 17 *Creighton L. Rev.* 307 (1984). In the view of that author the judicial presumption should be returned to its roots as a burden of proof. *Id.* The *Gordman* court acknowledged the difficulty of using two standards of review and classified the judicial presumption in favor of the county board 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. See, *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987). Use of the *Gordman* analysis allows consideration of both the judicial presumption and the statutory standard of review without the possible conflict or difficulties inherent in the application of two standards of review. The *Gordman* framework requires the Commission to consider all of the evidence produced in order to determine whether there is clear and convincing evidence that the decision, action, order, or determination being reviewed was unreasonable or arbitrary. It is within that framework that I have analyzed the evidence.

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Wm R. Wickersham, Commissioner