

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

LEDENE PEARSON,)	
)	
Appellant,)	Case No. 07C-150
)	
v.)	DECISION AND ORDER REVERSING
)	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 Ledene Pearson ("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 May 28, 2008, pursuant to an Order for Hearing and Notice of Hearing issued February 25, 2008. Commissioners Warnes, Salmon, and Hotz were present. 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). Commissioner Warnes was the presiding hearing officer.

Ledene Pearson was present at the hearing without legal counsel.

Thomas S. Barrett, a Deputy County Attorney for Douglas County, Nebraska, was present 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 to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-

5018 (Cum. Supp. 2006). 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, 2007, 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, 2007.

**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 IRONRIDGE LOT 57 BLOCK 0 138 x 245.85, Douglas County, Nebraska, ("the subject property").
3. Actual value of the subject property placed on the assessment roll as of January 1, 2007, ("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: IRONRIDGE LOT 57 BLOCK 0 138 x 245.85, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$59,400.00	\$Included in Total	\$100,00.00
Improvement	\$861,200.00	\$Included in Total	\$728,500.00
Total	\$920,600.00	\$650,000.00	\$828,500.00

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. The Taxpayer was served with a Notice in Lieu of Summons and duly answered that Notice.
7. An Order for Hearing and Notice of Hearing issued on February 25, 2008, as amended by an Order issued on February 25, 2008, set a hearing of the appeal for June 4, 2008, at 1:00 p.m. CDST.
8. 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.
9. Actual value of the subject property as of the assessment date for the tax year 2007 is:

Land value	\$Included in Total
Improvement value	<u>\$Included in Total</u>
Total value	<u>\$759,824.00.</u>

III. APPLICABLE LAW

1. Subject matter jurisdiction of the Commission in this appeal is over all questions necessary to determine taxable value. Neb. Rev. Stat. 77-5016 (7) (Supp. 2007).

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. “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).
5. 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).
6. 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).

7. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *City of York v. York County Bd. Of Equalization*, 266 Neb. 297, 64 N.W.2d 445 (2003).
8. 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).
9. The presumption disappears if there is competent evidence to the contrary. *Id.*
10. The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2006).
11. Proof that the order, decision, determination, or action 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).
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, 580 N.W.2d 561 (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. 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. FACTS

The subject parcel is a commercial city lot which has been improved with a 6,959 square foot commercial office building built in 2003. Exhibit 2:8. Two lots were originally purchased by the Taxpayer for \$128,000 and on one of the lots the improvement was constructed by the Taxpayer. Exhibit 2:7.

V. ANALYSIS

The Taxpayer has appealed the taxable valuation of the subject property for the year 2007.

The County valued the subject property using the Income approach to valuation of real property. (E2:16). The Taxpayer testified that the actual value of the subject property was \$659,200. This figure was calculated using the Net Operating Income (NOI) used by the County of \$70,421.65 divided by the square footage of 6,472. (E2:16). This calculation equals \$10.88 per square foot. The Taxpayer believed the County's rental rate of \$18 per square foot is unrealistic and testified that the actual rental rate she received for the subject property for 2006 was in the amount of \$10 per square foot. She testified that only 5,150 square feet of the total available rental area, 6,472 (E2:16) was rented as of January 1, 2007. However, the Taxpayer testified that even using the County's figures for NOI, \$70,421.65, the taxable valuation of the subject property would be \$659,200. This valuation number is based on her actual rented area of $5,150 \times \$10.88$ per square feet = \$56,832 divided by the County's capitalization rate of 8.5%). (E2:16). This opinion of value has as its basis the use of the rented space only and not the entire rentable space. This analysis is not in accordance with accepted mass appraisal techniques

authorized to be used by the County in valuing property using the income approach. “The first step in the income approach to value is to estimate the potential gross income for the property in question. Potential gross income is annual economic rent for the property at 100 percent occupancy. Economic rent is the annual rent that is justified for the property on the basis of a careful study of comparable properties in the area. In other words, economic rent is market rent and actually includes income, from all sources, that may be attributable to the real estate.” *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, pp. 204 - 205.

The Taxpayer similarly attempted to refute the County’s use of the Sales Comparison approach to valuation shown on Exhibit 5:24. Her testimony referred to a document on the Douglas County website that was not received as evidence. Her testimony was that based on the information on the website that a taxable valuation of \$651,994 is obtained for the subject property. The Commission finds that the Taxpayer’s valuation is not supported by competent evidence and is not in accordance with acceptable professional standards of mass appraisal techniques for use of the sales comparison approach to value the subject property.

The first issue is whether the comparable sale offered by the Taxpayer from the County’s Exhibit 5 page 24 is comparable. “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.

The Taxpayer did not make any adjustments between the alleged comparable property to the subject property. When using alleged “comparable” parcels to determine value, similarities and differences between the subject property and the comparables must be recognized. *Property*

Assessment Valuation, 2nd Ed., 1996, p.103. Most adjustments are for physical characteristics.

Property Assessment Valuation, 2nd Ed., 1996, p.105. “Financing terms, market conditions, location, and physical characteristics are items that must be considered when making adjustments . . .” *Property Assessment Valuation*, 2nd Ed., 1996, p. 98.

The Taxpayer testified, without objection by the County, to conversations she has had with an appraiser with the Douglas County Assessor’s Office subsequent to the decision reached by the County Board. The individual discussed with her a settlement figure based on corrected calculations. The Commission gives little weight to the testimony of the Taxpayer about these settlement discussions, but what may have been the settlement figure appears on Exhibit 2:17 and is in the amount of \$759,824. The Commission finds that this figure is part of the County’s exhibits and is of probative value as to the actual value of the subject property on January 1, 2007. (E2:17).

The Taxpayer utilized as evidence the exhibits provided by the County. She did not provide additional exhibits. The Taxpayer’s refutation of the County’s income and sales comparison approach to valuation is not convincing of actual value of the subject property. Her testimony alerts the Commission to scrutinize the County’s exhibits and the Commission finds that the actual value of the subject property on January 1, 2007 is \$759,824 as shown in Exhibit 2 page 17.

The Commission, upon review of all of the evidence presented, finds that competent evidence has been provided by the Taxpayer to meet his burden to rebut the presumption that the County Board faithfully performed its duties or had sufficient competent evidence to support its decision. The Commission has reviewed all of the evidence presented and finds that the

Taxpayer has shown by the reasonableness of the evidence a different taxable valuation and has proven by clear and convincing evidence that the County Board's decision was arbitrary or unreasonable. The appeal of the Taxpayer is granted to the extent that the taxable valuation for the subject property for 2007 is \$759,824.

**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 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. The Taxpayer has 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 vacated and reversed.

**VI.
ORDER**

IT IS ORDERED THAT:

1. The decision of the County Board determining actual value of the subject property as of the assessment date, January 1, 2007, is vacated and reversed.
2. Actual value, for the tax year 2007, of the subject property is:

Land value	\$Included in Total
Improvement value	<u>\$Included in Total</u>
Total value	<u>\$759,824.00.</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 2007.
7. This order is effective for purposes of appeal on July 21, 2008.

Signed and Sealed. July 21, 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.