

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

ROBERT E. OWEN, ET AL,)	
)	
Appellant,)	Case No. 10R 067
)	
v.)	DECISION AND ORDER
)	REVERSING THE DECISION OF
DOUGLAS COUNTY BOARD OF)	THE DOUGLAS COUNTY BOARD OF
EQUALIZATION,)	EQUALIZATION
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Robert E. Owen, et al ("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 24, 2011, pursuant to an Order for Hearing and Notice of Hearing issued December 2, 2010 as amended by an Order dated January 11, 2011. Commissioner Warnes, Vice-Chairperson of the Commission, was the presiding hearing officer. Commissioner Wickersham, Chairperson of the Commission, was absent. Commissioner Warnes, as Vice-Chairperson acting in the absence of the Chairperson, designated Commissioners Warnes, Salmon, and Hotz as a panel of the Commission to hear the appeal. Commissioner Hotz was excused. Commissioner Salmon was present. The appeal was heard by a quorum of a panel of the Commission.

Robert E. Owen, et al was present at the hearing through his attorney, Matthew J. Bock, legal counsel for the Taxpayer. The Commission approved without objection the motion of appellant's attorney to waive the presence of the Taxpayer.

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 (Reissue 2009). 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, 2010, 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, 2010.

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 ("the Subject Property") is described in the table below.
3. Actual value of the subject property placed on the assessment roll as of January 1, 2010, ("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:

Case No. 10R 067

Description: LOVELAND ADD LOT 3 BLOCK 14 S 100 ft lt 2 & all 207 x 297 OMAHA, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$184,400.00	Included in Total	\$184,400.00
Improvement	\$782,700.00	Included in Total	\$782,700.00
Total	\$967,100.00	\$825,000.00	\$967,100.00

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 2, 2010, as amended by an Order issued on January 11, 2011, set a hearing of the appeal for March 24, 2011, at 9:00 a.m. CDT.
6. 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.
7. Actual value of the subject property as of the assessment date for the tax year 2010 is:

Case No. 10R 067

Land value \$Included in Total

Improvement value \$Included in Total

Total value \$825,000.00.

**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) (Reissue 2009).
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 2009).
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 2009).
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 2009).

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) (Reissue 2009).
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) (Reissue 2009).
11. Proof that the order, decision, determination, or action appealed from 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 the 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. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. Cf. *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 a residential parcel improved with a two story house of 6,707 square feet of living area built in 1941 and remodeled in 2007. (E5:2). The house is rated very good for quality and good for condition. (E5:2).

The Taxpayer has asserted that the taxable value of the subject property as of January 1, 2010, is less than taxable value as determined by the County Board, and, in addition, the Taxpayer has asserted that the taxable value of the subject property as of January 1, 2010, is not equalized with the taxable value of other real property.

The appraiser for the Taxpayer provided an appraisal of the subject property effective January 1, 2010. (E4). The appraiser for the Taxpayer testified that he had inspected the subject property on June 18, 2010 as part of his retrospective appraisal. (E4:7). The Commission notes that the appraiser for the County Assessor did not do an interior inspection of the subject property. (E2:7). No evidence was provided as to when the last inspection of the subject property had been made by the appraiser for the County Assessor.

The appraiser for the Taxpayer used the sales comparison approach to value the subject property. Three alleged comparable parcels were used by the appraiser as shown on Exhibit 4 page 6. Each of these alleged comparable parcels were chosen by the appraiser on the basis of location. Each alleged comparable was located in the Loveland addition/neighborhood which is the same as the subject property. The appraiser for the Taxpayer testified that the three alleged comparable parcels represent the “top sales” of those parcels that had sold from this addition in the past year. Upon questioning, the appraiser stated that his reference to “top sales” was that the

sales were for the largest sale prices. The appraiser adjusted each sale price of the alleged comparables for differences in ratings for quality and condition and for other differences such as size of the land, gross living area, basement area, finished basement area, walkout basement and swimming pool. The Commission finds from its review of the property record files for each of the three alleged comparable sales provided by the Taxpayer's appraiser that the alleged comparable sales are not comparable to the subject property without adjustments for differences. (E6:1-9, E6:10-17 and E6:18-23). Further, the Commission finds that the appraiser for the Taxpayer used professionally accepted appraisal techniques in making adjustments for differences to determine the actual value for the subject property.

The Taxpayer's son testified that while some remodeling had occurred to the subject property, the property had remained unimproved since its purchase. He stated that there never had been tennis courts on the subject property. The remodeling that had occurred after purchase by the Taxpayer included two bathrooms, an addition, and flooring. The issue of whether tennis courts have been located on the subject property is a non issue because the Commission notes that the appraiser for the County Assessor did not value tennis courts on the subject property. (E2:10). The Taxpayer's appraiser testified that the subject property had functional obsolescence as demonstrated by the older appliances and the design of the kitchen as shown in photos. (E4:13). In addition, he opined that "I would estimate about 3,500 SF of the home would need to be renovated in order to be make comparable to the homes that have sold in the market north (sic) of \$650,000."

The Taxpayer's appraiser opined that the market value of the subject property for 2010 is \$825,000. (E4:6). The Commission gives great weight to this opinion of actual value.

The appraiser for the County Assessor used the sales comparison with multiple regression analysis approach to value the subject property as explained in its description of this approach. (E2:6). This valuation approach is one of the appraisal practices authorized by Nebraska law. Neb. Rev. Stat. §77-212 (Reissue 2009). The market calculation detail sheet is as shown in Exhibit 2 page 10. The appraiser recommended that the actual value of the subject property is as determined by the County Board, \$967,100. (E1:1). In support of this recommended value, the appraiser for the County Assessor provided three alleged comparable parcels. The Commission notes that none of the alleged comparable parcels are located in the neighborhood of the subject property. (E2:9) In addition, the parcels are not comparable to the subject property without adjustments for differences which have not been made. The Commission finds that the appraiser for the County Assessor did not use these sales of alleged comparable parcels to directly value the subject property, but rather they were provided to support the recommended valuation determined as shown in Exhibit 2 page 10. A written explanation of the use of the three alleged comparables is shown in Exhibit 2 page 6. The Commission gives little weight to the alleged comparables provided by the appraiser for the County Assessor in support of the actual value determined by the County Board.

The Commission has weighed the evidence provided by both parties. The Taxpayer provided a fee appraisal of the subject property. This appraisal valued the subject property as a single parcel as of January 1, 2010. As part of this appraisal, an inspection was made of the subject property by the Taxpayer's appraiser. The appraiser for the County Assessor used mass appraisal techniques to value the subject property as but one of many properties as of a given

date. No inspection was made of the subject property by the appraiser for the County Assessor.

The Commission gives the greater weight to the evidence provided by the Taxpayer.

“There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. The presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence on appeal to the contrary. From that point on, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.” *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 283-284, 753N.W.2d 802, 811 (2008) (quoting *Ideal Basic Indus v. Nuckolls Cty. Bd. of Equal.*, 231 Neb. 653, 654-55, 437 N.W.2d 501, 502 (1989)).

A taxpayer must introduce competent evidence of actual value of its property in order to successfully claim that a 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).

The Commission finds that the Taxpayer has provided competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination.

The Commission also finds that the Taxpayer has provided clear and convincing evidence that the County Board’s decision was arbitrary or unreasonable. The appeal of the Taxpayer is granted and the actual value of the subject property for 2010 is \$825,000.

**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, 2010, is vacated and reversed.
2. Actual value, for the tax year 2010, of the subject property is:

Case No. 10R 067

Land value	\$Included in Total
Improvement value	<u>\$Included in Total</u>
Total value	<u>\$825,000.00.</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. 2010).
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 2010.
7. This order is effective for purposes of appeal on June 29, 2011.

Signed and Sealed. June 29, 2011.

Nancy J. Salmon, Commissioner

William C. Warnes, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2010), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.