

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

TODD J. KATHOL,)	
)	
Appellant,)	Case No. 10R 002
)	
v.)	DECISION AND ORDER
)	
SARPY COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Todd J. Kathol ("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 26, 2011, pursuant to an Order for Hearing and Notice of Hearing issued November 24, 2010. Commissioner Wickersham, Chairperson of the Commission, was the presiding hearing officer. Commissioner Warnes was absent. Commissioner Wickersham, as Chairperson, designated Commissioners Wickersham, Salmon, and Hotz as a panel of the Commission to hear the appeal. Commissioner Salmon was excused. Commissioner Hotz was present. The appeal was heard by a quorum of a panel of the Commission.

Todd J. Kathol was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Nicole L. O'Keefe, a Deputy County Attorney for Sarpy County, Nebraska, was present as legal counsel for the Sarpy 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 Sarpy 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 18 Briarcliff, Sarpy County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$102,600.00	\$96,500.00	\$102,600.00
Improvement	\$346,659.00	\$245,000.00	\$346,659.00
Total	\$449,259.00	\$341,500.00	\$449,259.00

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 November 24, 2010, set a hearing of the appeal for January 26, 2011, at 9:00 a.m. CST.
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. Taxable value of the subject property as of the assessment date for the tax year 2010 is:

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Land value	\$102,600.00
Improvement value	<u>\$346,659.00</u>
Total value	<u>\$449,259.00.</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) (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 an improved parcel. The improvement on the parcel is a 2,487 square foot single family residence, with a 2,454 square foot basement, 1,520 square feet of

which is finished, and an attached 1,240 square foot garage. (E6:3). The Taxpayer contends that actual value of the subject property is less than actual value as determined by the County Board based on an analysis of five parcels he considered comparable. Even though the Commission does not adopt the analytical method presented by the Taxpayer, an analysis of the physical characteristics, attributes, and amenities of the subject property and the parcels presented by the Taxpayer for comparison, with assessment and sale information, is necessary to determine if the evidence supports the Taxpayer's positions. The physical characteristics, attributes, and amenities of the subject property and the parcels presented by the Taxpayer for comparison, with assessment and sale information, are summarized in the following tables.

Descriptor	Subject	Parcel 1	Parcel 2	Parcel 3
Exhibit	E6 ¹	E22:2-5	E22:6-9	E22:10-14
Location	9911 S 161 St	9888 S 163 rd Ave	16241 Sage St	9620 Cinnamon Dr
Lot Size	1.26 Ac	1.71 Ac	1.5 Ac	1.7 Ac
Condition	Average	Average	Average	Average
Quality	Good +	Good	Average +	Good
Yr Built	2007	1994	1993	1995
Exterior Walls	Siding	65% Siding 35% Masonry Veneer	100% Vinyl	100% Vinyl
Style	Ranch	Two Story	1½ Story	2 Story
Area Above Ground	2,487 Sq Ft	2,800 Sq Ft	2,381 Sq Ft	2,368 Sq Ft
Roof Cover	Comp Shingles	Comp Shingles	Comp Shingles	Comp Shingles
HVAC	100% Rev Heat Pump	100% Warm & / Cooled	100% Warm & Cooled	100% Warm & Cooled
Basement	2,454 Sq Ft	1,848 Sq Ft	1,506 Sq Ft	1,380 Sq Ft
Finished	1,520 Sq Ft			982

Descriptor	Subject	Parcel 1	Parcel 2	Parcel 3
Walkout	1		1	1
Bedrooms	2	3	3	4
Bathrooms	2.5	3	2.5	3
Garage Type	Attached	Attached	Attached Bsmt	Attached Detached Bsmt
Garage Area	1,240 Sq Ft	940 Sq Ft	572 Sq Ft 416 Sq Ft	528 Sq Ft 576 Sq Ft 286 Sq Ft
Misc Imp	2 Fireplaces, Wood Deck, Porch, 3 Car Driveway	Porch, Gazebo, 1 Car Driveway	Fireplace, 2 Porches, 1 Car Driveway, 2 Car Driveway	Fireplace, 2 Porches, Wood Deck, 4 Car Driveway
Lot Value	\$102,600	\$97,100	\$95,000	\$97,000
Imp Value	\$346,659	\$210,071	\$164,667	\$230,622
Taxable Value	\$449,259 ²	\$307,171	\$259,667	\$327,622
Sale Date		6/24/09	8/22/08	3/31/08
Sale Price		\$305,000	\$245,800	\$335,000

1. Four property record files are in evidence pertaining to valuation of the subject property as of January 1, 2010 (E6), (E7), (E16), and (E21:1-6). (E6) and (E21:1-6) each correctly list the physical characteristics, attributes, and amenities of the subject property as of January 1, 2010. The listing in Exhibit 7 is not accurate. No Exhibit was submitted with a listing that supported the County Board's determination of actual value.

2. Actual value as determined by the County Board. (E1).

Descriptor	Subject	Parcel 4	Parcel 5	Parcel 6
Exhibit	E6 ¹	E22:15-18	E22:19-22	E 23
Location	9911 S 161 St	9771 Cinnamon Dr	9923 S 162 St	10229 S 162 St
Lot Size	1.26 Ac	1.089 Ac	1.1 Ac	1.15 Ac
Condition	Average	Average	Average	Average

Descriptor	Subject	Parcel 4	Parcel 5	Parcel 6
Quality	Good +	Good	Good +	Very Good +
Yr Built	2007	1994	2001	2007
Exterior Walls	Siding	100% Siding	70% Siding 30% Face Brick	80% Siding 20% Face Brick
Style	Ranch	2 Story	1 Story	2 Story
Area Above Ground	2,487 Sq Ft	2,970 Sq Ft	2,344 Sq Ft	4,946 Sq Ft
Roof Cover	Comp Shingles	Comp Shingles	Comp Shingles	Comp Shingles
HVAC	100% Rev Heat Pump	100% Warm & Cooled	100 Warm & Cooled	100% Warm & Cooled
Basement	2,454 Sq Ft	1,288 Sq Ft	2,344 Sq Ft	3,851 Sq Ft
Finished	1,520 Sq Ft	978 Sq Ft	1,629 Sq Ft	3,087
Walkout	1		1	1
Bedrooms	2	4	3	5
Bathrooms	2.5	2.5	2.5	7
Garage Type	Attached	Built In	Attached	Built In Bsmt Det
Garage Area	1,240 Sq Ft	788 Sq Ft	1,987 Sq Ft	877 Sq Ft 186 Sq Ft 1,418 Sq Ft
Misc Imp	2 Fireplaces, Wood Deck, Porch, 3 Car Driveway	Fireplace, Wood Deck, Porch. Swimming Pool, Driveway	Porch, Wood Deck	2 Fireplaces, 2 Porches Wood Deck, Swimming Pool, Bsmt Bar, 3 Car Driveway, 1 Car Driveway
Lot Value	\$102,600	\$90,890	\$91,000	\$101,500
Imp Value	\$346,659	\$249,523	\$386,743	\$865,222
Taxable Value	\$449,259 ²	\$340,413	\$477,743	\$966,722

Descriptor	Subject	Parcel 4	Parcel 5	Parcel 6
Sale Date		6/20/08	4/15/05	10/28/10
Sale Price		\$349,900	\$370,000	\$732,000

1. Four property record files are in evidence pertaining to valuation of the subject property as of January 1, 2010 (E6), (E7), (E16), and (E21:1-6). (E6) and (E21:1-6) each correctly list the physical characteristics, attributes, and amenities of the subject property as of January 1, 2010. The listing in Exhibit 7 is not accurate. No Exhibit was submitted with a listing that supported the County Board’s determination of actual value.
2. Actual value as determined by the County Board. (E1).

The Taxpayer makes two assertions in support of his argument that the subject property is over valued based on the sales of the parcels shown in the tables above. The Taxpayer asserts that the parcels shown in the tables all had higher assessed values at time of sale that exceeded the sale prices showing a systematic overvaluation bias. Exhibit 26 shows a parcel assessed in the year of sale at \$364,657 selling for \$500,000. (E26:1). Exhibit 27 shows a parcel assessed in the year of sale at \$461,039 selling for \$539,000. (E27:1). Exhibit 28 shows a parcel with new construction selling for more than its assessed value in the first full year of assessment. (E28:1). Exhibit 29 shows a parcel assessed in the year of sale at \$412,963, selling for \$636,500. (E29:1).

Assessed values for residential parcels for tax year 2010 were determined based on two years of sales prior to the assessment year. *2010 Reports and Opinions of the Property Tax Administrator, Douglas County*, p. 7; 350 Neb. Admin Code, ch. 12 §003.07A(1) (3/09). If values are declining or rising, some lag in valuation occurs because the data analyzed is not as current as the market on a given day. The assessment records furnished show that values declined in several assessment years. The evidence does not support a finding of systematic overvaluation.

The Taxpayer also asserts that the subject property is in the wrong valuation neighborhood because it is in the same SID as the parcels described in the tables above. An appraiser employed by the County Assessor testified that the subject property is in a different valuation neighborhood and is not compared for valuation purposes with the parcels described in the tables because they are in older neighborhoods with different styles and types of construction. The evidence does not support the Taxpayer's contention that the subject property is in the wrong valuation neighborhood.

The Taxpayer estimated actual value of the subject property using an average value per square foot of sale price of sold parcels as shown in Exhibit 19. Exhibit 19 actually shows two different averages and values derived from the data. The appraiser employed by the County Assessor testified that the technique shown was not generally accepted and would not be used by an appraiser to estimate actual value of the subject property. The data used in Exhibit 19 is derived from parcels 1 through 5 shown in the tables above. 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) at 98. The comparison parcels presented by the Taxpayer, as seen from an examination of the tables above, are not comparable to the subject property. Even if the technique shown was valid, the underlying data could not be used to indicate actual value of the subject property.

The Taxpayer has produced no evidence of taxable value as of January 1, 2010.

The appraiser employed by the County Assessor testified that the assessment records for the subject property contained several errors at the time its valuation was considered by the

County Board. Based on use of the cost approach, the appraiser testified that after correction for the errors appearing in the assessment records that actual value of the subject property as of January 1, 2010 was \$505,407. The highest taxable value for which the Taxpayer had notice prior to the submission of Exhibits and the appraiser's testimony was \$449,259 as proposed by the County Assessor and adopted by the County Board. (E1). The Commission's rules and regulations allow it to consider a higher value only if the intent to prove a higher taxable value has been given in a pleading. 443 Neb. Admin. Code, ch. 5, §016.02A (06/09). The notice given by the County Board prior to the hearing that a higher value of \$505,407 would be proposed was contained in the calculations on page 2 of Exhibit 6 and in Exhibit 2. The notice given does not comply with the rules and regulations of the Commission and the proposed value of \$505,407 cannot be considered further.

The County Board's determination was based on materially incorrect assessment data and is, therefore, unreasonable or arbitrary. The Taxpayer has produced no evidence of actual value. Value as determined by the County Board, flawed as it may be, is the only evidence of value.

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 adduced sufficient, clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary.

**VI.
ORDER**

IT IS ORDERED THAT:

1. Taxable value, for the tax year 2010, of the subject property is:

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Land value \$102,600.00

Improvement value \$346,659.00

Total value \$449,259.00.

2. This decision, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer, and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2009).
3. Any request for relief, by any party, which is not specifically provided for by this order is denied.
4. Each party is to bear its own costs in this proceeding.
5. This decision shall only be applicable to tax year 2010.
6. This order is effective for purposes of appeal on May 11, 2011.

Signed and Sealed. May 11, 2011.

Wm. R. Wickersham, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (REISSUE 2009), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.

Commissioner Hotz, Concurring.

I concur in the result that actual value is \$449,259.

Robert W. Hotz, Commissioner