

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

JOHN A. PFAHL,)	
)	
Appellant,)	Case No 06C-029
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE CASS COUNTY
CASS COUNTY BOARD OF)	BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by John A. Pfahl ("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 15, 2007, pursuant to an Order for Hearing and Notice of Hearing issued November 16, 2006. Commissioners Wickersham, Warnes, and Lore were present. Commissioner Warnes presided at the hearing.

John A. Pfahl, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Nathan B. Cox, County Attorney for Cass County, Nebraska, appeared as legal counsel for the Cass 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:

Was the decision of the County Board determining actual value of the subject property unreasonable or arbitrary?

What was 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:

Was the decision of the County Board determining taxable value of the subject property unreasonable or arbitrary?

Was taxable value of the subject property 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?

What was 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 described below is 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 Cass 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: UNION - OUTLOTS LOT 44 & PT LOT 45 SW 1/4 SE 1/4 SECTION 23 TOWNSHIP 10 RANGE 3 E (.514 AC) , Cass County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 6,627.00	\$ 6,627.00	\$ 6,627.00
Improvement	\$194,199.00	\$115,873.00	\$194,199.00
Total	\$200,826.00	\$122,500.00	\$200,826.00

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 Amended Order for Hearing and Notice of Hearing issued on November 16, 2006, set a hearing of the appeal for March 15, 2007, at 1:00 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. Actual value of the subject property as of the assessment date for the tax year 2006 is:

Land value	\$ 6,627.00
Improvement value	<u>\$194,199.00</u>
Total value	<u><u>\$200,826.00.</u></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. *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 qualified 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, 366 - 367, 303 N.W.2d 307,311 (1981).
14. 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).
15. 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 there is 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).
16. 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) (citations omitted)

17. The Commission can grant relief only if there is clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005).
18. "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).
19. 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).
20. 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).
21. "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).

IV. ANALYSIS

This appeal includes both the issues of valuation and equalization of the subject

property for 2006 (Form 422, Exhibit 1:2). The Taxpayer testified that only the improvements to the subject property are in dispute as he does not dispute the valuation of the land at \$6,627 (Exhibit 1:1).

The subject property is used as an auto and farm repair shop. In addition, 2,304 square feet of the improvements are used as an office and 1,280 square feet, is used for storage.

The subject property is a commercial property located at 400 Main Street, Union, Nebraska. The land component of the subject property includes Lot 44 and part of Lot 45 for a total acreage of .514 acre.

The improvements on the subject property are itemized on Exhibits 8:4 and 8:5. A total building area of 11,456 square feet is included (Exhibit 8:5). The Taxpayer has appealed his 2006 valuation for several reasons.

First, it is the Taxpayer's belief that the property should not be assessed more than its purchase price plus the amount of money he had spent to make repairs to the roof and reasphalting of the parking area. The subject property was purchased on May 17, 2002, for \$120,000 (Exhibit 8:4). No improvements had been added since its purchase. A 20 feet x 64 feet (1,280 square feet) addition had been added to this property at an uncertain time in the past and is shown on the sketch of the improvements on Exhibit 8:5. This area is used for storage. The assessment of this addition was first added to the property for 2006. The price paid for asphaltting was in the amount of \$1,070 (Exhibit 2:1). The other money spent was on the leaking roof in the amount of \$1,430.

The property was purchased by the Taxpayer from the Farmers State Bank of Nebraska. The subject property had been held by the bank for approximately three years before being sold

to the Taxpayer. It is uncertain what advertisement was done associated with the property during this three year period. More importantly, it is uncertain whether the sale of the subject property was done with the knowledge by the public that it was available for sale. It is the position of the County that the subject property was part of a foreclosure action and thus should not be treated as an arms length transaction (Exhibit 9:1).

A second issue presented by the Taxpayer on his Form 422, Exhibit 1, is that an increase of \$93,000 in one year was excessive. In support of this position, the Taxpayer alleges that no other building has been sold in Union to warrant an increase (Exhibit 1:2).

A.
ISSUE OF EQUALIZATION

The Taxpayer provided as evidence screen shots from the Assessor's website for 13 other properties (Exhibits 4:1 to 4:13). The single page for each property does not include the specific characteristics of the property, thus making it impossible to compare the subject property with the comparables. The Commission's Order for Hearing requires the production of the property record files from the County Assessors office to allow the Commission to make comparisons of properties. The Taxpayer did not provide evidence of actual value of comparable properties in order for the Commission to compare the assessed valuations with the actual values. Equalization requires comparing the ratios of actual value to the assessed valuation. The Commission does not find sufficient evidence to support the Taxpayers belief that his property is not assessed uniformly and proportionately with other comparable properties in Cass County for 2006.

B.
ISSUE OF VALUATION

The Commission next addresses the valuation issue. The Taxpayer testified that his opinion of value of the subject property is in the amount of \$122,500. This value is explained by the Taxpayer as representing the purchase price plus the money spent on the asphaltting of the area around his improvement. The price paid for this asphaltting was in the amount of \$1,070 (Exhibit 2:1). The other money spent was on the leaking roof in the amount of \$1,430.

The County Board provided 4 comparable properties, Exhibits 7:4, 7:5, 7:6 are located on Main Street near the subject property. Exhibit 7:7-8 is a newer property (1998) which sold and is located several miles to the east on Highway 75. These comparable properties were offered to compare to the subject property; however, the County Board utilized the Cost Approach Valuation method to value the subject property (Exhibit 8:4 and 8:5). The Cost Approach to valuation is an approved valuation method authorized by Nebraska statute. Neb. Rev. Stat. §77-112 (Reissue 2003). Using the Cost Approach to value the subject property, the valuation was determined to be \$200,826.

The Commission heard testimony and found that there were several errors on the property record cards for characteristics of the subject property. These errors were that portions of the improvements to the subject property had heating/cooling when the property record card showed they did not. This is shown on Exhibit 8:2. Testimony by the Taxpayer and the County agreed to the fact that the addition of 1,280 SF was valued as heated/cooled when it is not; however, the office, 2,304 SF is heated/cooled despite being shown not to be such.

The second error is that of the square footage of the asphalted land around the

improvements on the subject property. Too much asphalt, 14,720 square feet (SF) (Exhibit 8:3) is credited to the subject property than is possible. The total area of the land is .514 acres x 43,560 SF/acre = 22,389.84 SF. The total area of the improvements is 2,304 SF + 3,072 SF + 4,800 SF + 1,280 SF = 11,456 SF. Thus, the available land for asphaltting is only 22,389.94 SF - 11,456 SF = 10,933.94 SF. This error accounts for land that was not asphalted, 14,720 SF - 10,933.94 SF = 3,786.06. The Taxpayer acknowledged that he also owns the land onto which the asphalt extends which is adjacent to the parcel subject to this appeal.

The two adjustments discussed above plus the depreciation to these improvements would result in a different indicated value; however, the Commission is not able to calculate the differences. The Commission is aware that it would be necessary to input these corrections into the mass appraisal computer software used by Cass County in order to calculate a net change to value using the cost approach. These errors need to be addressed by the County Assessor in future valuations, but the Commission does not have sufficient evidence to grant relief for 2006.

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 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 affirmed.

**VI.
ORDER**

IT IS THEREFORE 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	\$ 6,627.00
Improvement value	<u>\$194,199.00</u>
Total value	<u><u>\$200,826.00.</u></u>
3. This decision, if no appeal is timely filed, shall be certified to the Cass County Treasurer, and the Cass 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 April 26, 2007.

Signed and Sealed. April 26, 2007.

Wm. R. Wickersham, Commissioner

Susan S. Lore, Commissioner

William C. Warnes, Commissioner

SEAL

ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW CONTAINED IN NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.