

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

JULIE K. DILLON,)	
)	
Appellant,)	Case No 06R-089
)	
v.)	DECISION AND ORDER REVERSING
)	THE DECISION OF THE DODGE
DODGE COUNTY BOARD OF)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	

**I.
STATEMENT OF FACTS**

The above-captioned case was called for a hearing on the merits of an appeal by Julie K. Dillon ("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, 2007, pursuant to an Order for Hearing and Notice of Hearing issued November 20, 2006. Commissioners Warnes, Lore, and Hans were present. Commissioner Warnes presided at the hearing.

Julie K. Dillon ("the Taxpayer"), was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Stacey Hultquist, a Deputy County Attorney for Dodge County, Nebraska, appeared as legal counsel for the Dodge County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits and heard testimony. The Case File and Exhibits 1 - 9 were received without objection. Objection to Taxpayer's exhibit 10 was granted due to untimely submission of said exhibit.

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.

II. 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?

**III.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has an interest, sufficient to maintain this appeal, in a parcel of real property described below. That parcel is the ("subject property").
2. Actual value of the subject property placed on the assessment roll as of January 1, 2006, ("the assessment date") by the Dodge 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: Lake Ventura Sub Lot 11 Dodge County, Dodge County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$150,000.00	\$ 68,865.00	\$120,000.00
Improvement	\$150,275.00	\$150,275.00	\$221,440.00
Total	\$300,275.00	\$219,140.00	\$341,440.00

3. An appeal of the County Board's decision was filed with the Commission.
4. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
5. An Order for Hearing and Notice of Hearing issued on November 20, 2006, set a hearing of the appeal for January 26, 2007, 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. Actual value of the subject property as of the assessment date for the tax year 2006 is:

Land value	\$120,000.00
Improvement value	<u>\$150,275.00</u>
Total value	<u>\$270,275.00.</u>

**IV.
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. Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.” *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534, (1983).
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 the Taxpayer establishes by 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

Taxpayer appeals her 2006 property valuation on both the issues of valuation, Exhibit 1:2, and equalization, Exhibit 1:5. The property record file for the property is found at Exhibit 3:1-2. The property is a one story single family residence situated in a lake development on Ventura Lake, Fremont, Nebraska. The house was built in 1978 and the Taxpayer purchased it on April 13, 2006 for \$352,000. The improvements consist of 1,345 square feet of finished living area.

The Taxpayer presented no exhibits; however, she referenced exhibits 3-7 of the County which included the property record cards/files for other properties which were all part of the same lake development, Lake Ventura. The County did not put on any evidence, but all of its exhibits were received into evidence.

The Commission notes a consistent pattern of valuation for the land when exhibits 3-7 are examined. The land is assessed at \$120,000.00 per lot on three of the County's comparables and \$125,000.00 on exhibit 5:1.

The Commission notes that the Dodge County Referee assigned to this protest also used \$120,000.00 as the value of the land, Exhibit 9:9 and 10. Unless \$120,000.00 is used for the taxable value of Taxpayer's land as ordered by the County Board, her property would not be equalized with comparable properties within Dodge County.

The Commission finds that the taxable value of Taxpayer's land is \$120,000.00.

The Commission next turns to the value of the improvements on the subject property. From the exhibits of the County it is determined that the County used the cost approach to value

the improvements. The replacement cost new, less depreciation, is shown on Exhibit 3:2 as \$150,275.00. This value is a product of the County's own assessment valuation process and was available to the County Board in the making of their decision at the time of hearing on Taxpayer's protest. The County Board did not use the Assessor's recommendation, but instead simply took 97 percent of the recent sale price. This method of valuing property is not in accordance with any approved valuation method and is without merit without further explanation or evidence. The 97 percent is the ratio found to be present after a review of the assessment to sales ratios used in the mass appraisal process to value all residential properties within Dodge County. It is not a measure of what an individual property is worth for taxable value. Actual value and market value are one and the same term and property in the State of Nebraska is valued at 100% of this value. See, Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2006). The County was incorrect in the method used to value the subject property and in the percentage used to order the taxable value. The Commission finds that the process used by the County was arbitrary and unreasonable. The presumption of correctness given initially to the County is removed and the Commission finds there to be clear and convincing evidence that the County acted in an arbitrary and unreasonable manner.

The sale price of a property is but one indication of the value of actual or market value. *Potts v. Board of Equalization of Hamilton County*, 213 Neb.37, 48, 328 N.W.2d 175, 328 (1982). In this appeal, the Taxpayer appears to have paid too much for her property, but that is not for the Commission to decide. The Commission's focus is on what is the correct market value and the evidence of that value so that the County's taxable value is correct.

The Commission finds that the County Board's decision is incorrect, unreasonable and arbitrary and must be reversed. The Commission finds that the Taxpayer prevails on both her equalization and valuation issues.

The taxable value of the subject property shall be the land value of \$120,000.00 and \$150, 275.00 for the improvements for a total taxable value of \$270,275.00. This figure is the same as that recommended by the referee, Exhibit 9:10.

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 and the decision of the County Board should be vacated and reversed.

**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 vacated and reversed.
2. Actual value of the subject property for the tax year 2006 is:

Land value \$120,000.00

Improvement value \$150,275.00

Total value \$270,275.00.

3. This decision, if no appeal is timely filed, shall be certified to the Dodge County Treasurer, and the Dodge 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 February 12, 2007.

Signed and Sealed. February 12, 2007.

Susan S. Lore, Commissioner

Robert L. Hans, 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.