

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

BRENTWOOD MANOR, INC.,)	
)	
Appellant,)	Case No 05C-219
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE ADAMS
ADAMS 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 Brentwood Manor, Inc., 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 October 23, 2006, pursuant to a Notice and Order for Hearing issued July 3, 2006. Commissioners Wickersham, Warnes, and Lore were present. Commissioner Wickersham presided at the hearing.

Steve Craig, President, was present at the hearing on behalf of Brentwood Manor, Inc., ("the Taxpayer"), without legal counsel.

The Adams County Board of Equalization ("the County Board") appeared through legal counsel, Charles A. Hamilton, a Deputy County Attorney for Adams County, Nebraska.

The Commission took statutory notice, received exhibits and heard testimony.

The Commission has reformed the caption in this case to conform to evidence of ownership. (1:1).

The Commission is required by Neb. Rev. Stat. §77-5018 (Supp. 2005) 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 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, 2005?

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described as Lot 1 Brentwood Manor Subdivision, City of Hastings, Adams County, Nebraska, ("the subject property").
2. Taxable value of the subject property placed on the assessment roll as of January 1, 2005, ("the assessment date") by the Adams County Assessor, value as proposed by the Taxpayer in a timely protest, and taxable value as determined by the County Board is shown in the following table:

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Description: Lot 1 Brentwood Manor Subdivision, City of Hastings, Adams County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 101,715.00	\$	\$ 101,715.00
Improvement	\$1,830,585.00	\$	\$1,830,585.00
Total	\$1,932,300.00	\$1,482,590.00	\$1,932,300.00

3. The Taxpayer timely filed an appeal of the County Board's decision to 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 July 3, 2006, set a hearing of the Taxpayer's appeal for October 23, 2006, at 9:00 a.m. CDST.
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 for the tax year 2005 is:

Land value	\$ 101,715.00
Improvement value	<u>\$1,830,585.00</u>
Total value	<u>\$1,932,300.00.</u>

**III.
APPLICABLE LAW**

1. "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).

2. 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).
3. 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).
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 qualified agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004).

7. 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).
8. 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).
9. 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)
10. 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).
11. "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).

12. 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).
13. 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).
14. A corporate officer or other representative of an entity, must be shown to be familiar with the property in question and have a knowledge of values generally in the vicinity to be qualified to offer an opinion of value. *Kohl's Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb. App. 809, 638 N.W.2d, 881 (2002).

IV. DISCUSSION

The subject property is a 36 unit apartment complex built in 1994 with attached garages and associated storage units.

The Taxpayer contends that actual value of the subject property should be determined by reference to the sale of another nearby apartment complex ("Chateau"). Chateau is described in Exhibits 17 and 18. Chateau sold on July 20, 2004 for \$2,035,000.00. (E16:2, E17:1 and (E18:1). The Taxpayer asserted that the Taxable value of the subject property should be 74% of \$2,030,000.00 as the sale price of Chateau. (E1:1). There are several difficulties with the Taxpayer's calculation. The Taxpayer asserted that actual value of the subject property as of January 1, 2005, based on that calculation was \$1,482,590.00. (E1:1). However, 74% of \$2,030,000.00 is \$1,502,200.00 and 74% of \$2,030,000.00 is %1,505,900.00.

The Taxpayer derived his valuation factor from the relative incomes of the subject property and Chateau. The Taxpayer alleges that Chateau produces 26% more gross income than the subject property and that therefore the subject property's actual value is 74% of the value indicated for Chateau by its sale. Taxpayer used the income approach to obtain an indication of value. The income approach is "most suitable for types of properties frequently purchased and held for the purpose of producing income, such as apartments. . . ." *Mass Appraisal of Real Property*, International Association of Assessing Officers, 1999, p. 8.

The Income Approach can be defined as "a set of procedures through which an appraiser derives a value indication for an income-producing property by converting its anticipated benefits (cash flows and reversion) into property value. This conversion can be accomplished in two ways. One year's income expectancy can be capitalized at a market-derived rate or at a capitalization rate that reflects a specified income pattern, return on investment, and change in the value of the investment. Alternatively, the annual cash flows for the holding period and the reversion can be discounted at a specified yield rate." *The Dictionary of Real Estate Appraisal*, Fourth Edition, Appraisal Institute, p.143, (2002). The steps required for use of the income approach with direct capitalization may be summarized as (1) estimate potential gross income; (2) deduct estimated vacancy and collection loss to determine effective gross income; (3) deduct estimated expenses to determine net operating income; (4) divide net operating income by an estimated capitalization rate to yield indicated value. *The Appraisal of Real Estate* 12th Edition, The Appraisal Institute, 2001, pp. 493 - 494.

A variety of techniques may be used to quantify various components of any application of the approach. *Supra*, at chs 20-24, (2001). The Nebraska Supreme Court has made it clear

however that the income must be determined based on earning capacity and not actual income.

In re Assessment of OL & B Ry. Co., 213 Neb. 71, 75-76, 327 N.W.2d 108, 111 (1982)

Three major methods are used to develop an indication of value using the income approach, direct capitalization, yield capitalization and a discounted cash flow analysis. *Id.* The direct capitalization method produces an indication of value based on a single year's estimated income. *Supra*, at 529. A yield capitalization method requires an analysis of income and expected returns over multiple years. *Supra*, at 549. Discounted cash flow analysis is a refinement of the yield capitalization method in which a reversionary value is added to the indicated value of the income stream. *Supra*, at 569. A reversionary value is added on the assumption that the asset producing an income stream still exists and has value at the end of the period. *Id.* That value is discounted to present value as of the valuation date and added to the value of the income stream. *Supra*, at ch 24.

A method of valuation mathematically related to direct capitalization is the use of gross income multipliers. *The Appraisal of Real Estate* 12th Edition, The Appraisal Institute, 2001, p546. A gross income multiplier is the ratio of the sale price of a comparable property to its annual gross income at the time of sale. *Id.* Gross income multipliers are to be used with caution. The parcels analyzed must be comparable to the subject property in terms of physical, location, and investment characteristicness. *Id.* Even if a gross income multiplier is used consideration has to be given to the operating expense ratios of the parcels because expenses of operation may make comparison of the parcels impossible. *Supra*. p. 547. In addition caution is necessary to be assured that the income measured is only rental income and that the same measure of income either potential gross income or effective gross income is used. *Id.*

Likewise the multiplier once determined must be applied to income determined on the same basis used to derive the multiplier. *Id.*

The Taxpayer presented Chateau's financial data for the year 2003. (E14). The taxpayer presented the subject property's financial data for the year 2004. (E15). There are substantial difference in the two properties including age, size of the complex, construction, configuration of the complexes and size and style of units. The income data presented for parcels is for different years. The evidence provided is not sufficient for the development of an opinion of value based on use of the income approach.

The Taxpayer has not presented clear and convincing evidence that the decision of the County Board was incorrect arbitrary or unreasonable.

**V.
CONCLUSIONS OF LAW**

1. The Commission has subject matter jurisdiction in this appeal.
2. Subject matter jurisdiction of the Commission in this appeal is over all 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).
3. The Commission has jurisdiction over the parties to this appeal.
4. 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, 2005, is affirmed.
2. Taxable value of the subject property for the tax year 2005 is:

Land value	\$ 101,715.00
Improvement value	<u>\$1,830,585.00</u>
Total value	<u><u>\$1,932,300.00.</u></u>
3. This decision, if no appeal is timely filed, shall be certified to the Adams County Treasurer, and the Adams County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Supp. 2005).
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 2005.
7. This order is effective for purposes of appeal November 6, 2006.

Signed and Sealed. November 6, 2006.

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 (SUPP. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.