

**NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

JOYCE HIDDLESTON,)	
)	
Appellant,)	CASE NO 05R-035
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE DOUGLAS
DOUGLAS 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 Joyce Hiddleston 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, 2006, pursuant to a Notice and Order for Hearing issued January 5, 2006. Commissioners Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Joyce Hiddleston, and her spouse Charles Hiddleston ("the Taxpayer") were present at the hearing without legal counsel.

The Douglas County Board of Equalization ("the County Board") appeared through legal counsel, James R. Thibodeau, a Deputy County Attorney for Douglas County, Nebraska.

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

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.
FINDINGS**

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described as Lot 2, Block 3, Meadow Lane 2nd Addition, Omaha, Douglas 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 Douglas 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:

Description: Lot 2, Block 3, Meadow Lane 2nd Addition, Omaha, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$20,000.00	\$-0-	\$ 20,000.00
Improvement	\$187,200.00	\$-0-	\$161,700.00
Total	\$207,200.00	\$165,324.00	\$181,700.00

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 January 5, 2006, set a hearing of the Taxpayer's appeal for March 15, 2006, at 3:00 p.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. For reasons stated below the Taxpayer has not adduced sufficient, clear and convincing evidence that the decision of the County Board was unreasonable or arbitrary, and the decision of the County Board should be affirmed.
8. Taxable value of the subject property for the tax year 2005 is:

Land value	\$ 20,000.00
Improvement value	<u>\$161,700.00</u>
Total value	<u>\$181,700.00.</u>

II. CONCLUSIONS OF LAW

1. Subject matter jurisdiction of the Commission 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)
2. The Commission has jurisdiction over the parties and the subject matter of this appeal.
3. “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).

4. 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).
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. “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. Cons.*, art. VIII, §1
7. Equalization 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).
8. 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).
9. 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).
10. The Taxpayer must establish by clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005)

Garvey Elevators, Inc. v. Adams County Board of Equalization, 261 Neb. 130, 621 N.W.2d, 523, (2001).

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).

III. DISCUSSION

The subject property is an improved residential lot. The two story residence on the lot was built in 1964. (E8:4). The number of square feet of gross living area in the residence as shown in the assessor's records was disputed by the Taxpayer and corrected by the County Board. (10:2 and 3). The County Board multiplied the corrected gross living area square footage (1,943), by \$93.54 and determined that the actual value of the subject property was \$181,700. (E10:2). \$93.54 is the average Actual Value /SF of three properties proposed by the Assessor as comparables as shown in Exhibit 1 at page 8 ($\$89.46 + \$86.80 + \$104.35 = \$280.61 \div 3 = \$93.54$). The Taxpayer testified that the taxable value of the subject property as determined by the County Board was not equalized with comparable properties because the

value per square foot of gross living area, \$93.54, as determined for the subject property was higher than the value per square foot of gross living area for comparables. The Taxpayer relied on various Residential Sales comparables Inventory and Account Value Summary sheets produced by the County for that analysis.

Two different summary sheets were prepared by the County. (E1:8, and E8:1). The Taxpayer modified one of the Account Value Summary sheets with the addition of information concerning an unsold neighboring property. (E3:3). One comparable was rejected by the Taxpayer because it was both distant from the subject property and unlike the subject in design, age, or location. An appraiser for the County acknowledged that the property shown as comparable 3 on page 8 of Exhibit 3 at 1035 N 127 Av. is not comparable to the subject property. Another property offered as a comparable by the County but rejected by the Taxpayer is comparable 3 on page 1 of Exhibit 8. The Taxpayer testified that he was personally familiar with the home, that additions to the first and second stories were constructed in the 1990's, and that the county records did not properly reflect those additions. An Appraiser for the County testified that he considered the property to be comparable to the subject property even after he heard the Taxpayer's testimony.

The Taxpayer showed that an average of actual values per square foot of gross living space for four of the comparables produced by the County which he considered to be comparable was \$85.95. (E11:3). If assessed at \$85.95 per square foot of gross living area, the average for the four county comparables accepted by the Taxpayer, the subject property would have an assessed value of \$167,000 ($\$85.95 \times 1,943 = \$167,000$). The Taxpayer testified that the subject property should have an assessed value per square foot of gross living area of \$85.83 or

\$166,700 ($\$83.83 \times 1,943 = \$166,767.69$). The basis for the Taxpayer's value per square foot is the average of five assessed values shown on Exhibit 3 at page 3 ($\$88.47 + \$82.71 + \$89.46 + \$84.81 + \$83.71 = \$429.16 \div 5 = \$85.84$). That calculation by the Taxpayer contains the Actual Value/\$SF of the subject property, \$88.47. In an effort to find a new value for the subject property, on the basis presented by the Taxpayer, calculations cannot rely even in part on the value objected to.

In this case the Taxpayer asks the Commission to utilize a technique for determining value used by the County Board, averaging the values per square foot of gross living area of selected comparables shown on an account value summary, to make a new determination of value. That calculation assumes that actual value for all properties other than the subject property as stated are correct and that any differences between the subject property and the comparables do not require adjustments to make the properties comparable. The technique used by the County's Referee is subject concerns detailed later in this order and by itself does not support the County Board's determination of value. The Appraiser for the County testified however, that the value per square foot of gross living area as determined by the County Board was reasonable because he would expect a small home, that is one with 1,943 square feet of gross living area, to have a higher value per square foot than the larger homes shown in all of the Account Value Summaries submitted.

In all of the confusion that the County records and the valuation technique adopted by the County Board create in this case one fact is controlling, the County Board determined that the size of the residence was 1,943 square feet. That determination is unchallenged. The smallest residence described in the Account value summaries is 2,264 square feet. (E12:1 comp 1). That

residence is 16.52% larger than the residence on the subject property ($2,264 - 1,943 = 321 \div 1,943 = .1652$). The Commission cannot determine that a residence that is 16.52%, or more, larger than another is a comparable property.

The Taxpayer presented evidence of the taxable “assessed” value of various parcels one of which was the subject property. The Taxpayer contends that the actual or fair market value of the subject property should be determined based on the taxable or “assessed” value per square foot of the other parcels. A Taxpayer wishing to use taxable “assessed” values to prove actual or fair market value has three tests to meet; proof that the method is a professionally approved mass or fee appraisal approach; appropriate application of the approach and reliability of the evidence.

Methods through which a determination of actual value may be made for mass appraisal and assessment purposes are identified in Nebraska Statutes and include the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods. Neb. Rev. Stat. §77-112 (Reissue 2003). A comparison of assessed values is not identified in the Nebraska Statutes as an accepted approach for a determination of actual value for purposes of mass appraisal. *Id.* Because the method is not identified in statute proof that of its acceptance as a appraisal method would have to be produced. *Id.* No evidence has been presented to the Commission that comparison of assessed values is a professionally accepted mass or fee appraisal approach.

In the sales comparison approach, a sale price is an indication of actual value for a sold property but has to be adjusted to account for differences between properties to become an indicator of market value for another property. *The Appraisal of Real Estate*, Twelfth Edition, Appraisal Institute, Chs 17, 18, 19, (2001). If the “taxable ‘assessed’ value comparison

approach” was shown to be a professionally accepted method of appraisal, an analysis of differences and adjustments to the taxable “assessed” value of comparison properties would be necessary to obtain an indication of value for a subject property. No adjustments or analysis of adjustments necessary to compensate for differences between the subject property and the taxable “assessed” values of other parcels was presented

Implicit in the Taxpayer's position is an assumption that all parcels for which taxable “assessed” values were presented, except for the subject property, were assessed correctly. Case law provides a presumption that a decision of a County Board is correct. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W.2d 518 (2001). A presumption that a County Board’s decision is correct cannot however extend to taxable “assessed” values which have not been determined by the County Board. There is no evidence in this case that the County Board determined the value of any parcel in evidence other than the subject property. Finally case law also provides a presumption that a decision of a County Assessor is correct. *Woods v. Lincoln Gas and Electric Co.*, 74 Neb. 526, 527 (1905), *Brown v. Douglas County*, 98 Neb. 299, 303 (1915), *Gamboni v. County of Otoe*, 159 Neb. 417, 431, 67 N.W.2d 489, 499 (1954), *Ahern v. Board of Equalization*, 160 Neb. 709, 711, 71 N.W.2d 307, 309 (1955). The presumption may be extinguished. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). A Taxpayer may criticize decisions of an assessor on a broad basis, for example, the assessor merely adopted values determined by someone else. If the presumption of correctness disappears for the subject property and the methods, approach or general application of techniques used by the assessor were used by the assessor to determine taxable “assessed” value for other parcels, then the presumption also

disappears for all those other parcels as well. If assessment methods for various parcels are shown to be different, the presumption or correctness would not be overcome for those parcels but there must be proof that the alternate method arrived at the same measure of actual or fair market value. If it is shown that reasons for extinguishing the presumption of correctness were specific to the subject property the presumption would not be extinguished for the other parcels. The requirement is not just to show that the subject property was not valued correctly but to show also that each of the other offered parcels were valued correctly. In other words the Taxpayer must show why a presumption of correctness should be applied selectively. There is no evidence in this case that the subject property was valued using a different method than other parcels or that the method used was improperly applied to the subject property.

The County produced various Account Value Summaries generated by a computer program. Computer Assisted Mass Appraisal programs are recognized as a tool for mass appraisal of property. *Mass Appraisal of Real Property*, International Association of Assessing Officers, 24, (1999). Uniform Standards of Appraisal Practice applicable to private fee appraisals require that appraisals be supported with verifiable data, disclosure of techniques, proof of professional acceptance for techniques used, details of an appraiser's application of a valuation approach, and rationales for judgments made. Demonstrated knowledge by a user of a CAMA program's parameters, the data on which the program relies, disclosure of adjustments, the basis for those adjustments and use of a system for verification of program output are crucial to the credibility of results produced by a CAMA program.

Despite obvious problems presented by the evidence, it is the Taxpayer's burden to prove that the decision of the County Board was unreasonable or arbitrary. A qualified appraiser for

the county testified that the result reached by the County Board was reasonable, however it was obtained, and the Taxpayer failed to produce any evidence of actual value to support an equalization analysis. In this case the Commission cannot determine that the action of the County Board was unreasonable or arbitrary based on the evidence submitted by the Taxpayer.

**V.
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 \$ 20,000.00

Improvement value \$161,700.00

Total value \$181,700.00.

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 (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 April 3, 2006.

Signed and Sealed. April 3, 2006.

Wm. R. Wickersham, Commissioner

Susan S. Lore, Commissioner

Robert L. Hans, 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.