

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

FLOYD D. SELL,)	
)	
Appellant,)	Case No. 07C-148
)	
v.)	DECISION AND ORDER REVERSING
)	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 Floyd D. Sell ("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 June 4, 2008, pursuant to an Order for Hearing and Notice of Hearing issued February 27, 2008. Commissioners Warnes, Salmon, and Hotz were present. Commissioner Wickersham was excused from participation by the presiding hearing officer. The appeal was heard by a panel of three commissioners pursuant to 442 Neb. Admin. Code ch.4 §11 (10/07). Commissioner Warnes was the presiding hearing officer.

Floyd D. Sell, spouse of the Appellant and part owner of the subject property, was present at the hearing without legal counsel.

Thomas S. Barrett, a Deputy County Attorney for Douglas County, Nebraska, was present as legal counsel for the Douglas 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, 2007, 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, 2007.

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 is described as BONITA LOT 13 BLOCK 4 - EX IRREG W 9 FT - LTS 12 & 13 in Douglas County, Nebraska, ("the subject property").
3. Actual value of the subject property placed on the assessment roll as of January 1, 2007, ("the assessment date") by the Douglas 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: BONITA LOT 13 BLOCK 4 - EX IRREG W 9 FT - LTS 12 & 13, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$42,900.00	\$42,900.00	\$42,900.00
Improvement	\$25,800.00	\$2,100.00	\$25,800.00
Total	\$68,700.00	\$45,000.00	\$68,700.00

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. The Taxpayer was served with a Notice in Lieu of Summons and duly answered that Notice.
7. An Order for Hearing and Notice of Hearing issued on February 27, 2008, as amended by an Order issued on February 27, 2008, set a hearing of the appeal for June 11, 2008, at 9:00 a.m. CDST.
8. 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.
9. Actual value of the subject property as of the assessment date for the tax year 2007 is:

Land value	\$42,900.00
Improvement value	<u>\$21,268.00</u>
Total value	<u>\$64,168.00.</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) (Supp. 2007).
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 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. 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).
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 presumption remains until there is competent to the contrary is presented at which point the presumption disappears. From that point forward, the reasonableness of the valuation fixed by the County Board becomes one of fact based on all of the evidence presented. *Garvey Elevators, Inc. v. Adams County Bd. Of Equalization*, 261 Neb. 130, 621 N.W.2d 518 (2001).
11. 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

- (8) (Cum. Supp. 2006), and 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 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. Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981).

IV. ANALYSIS

The subject property is a commercial lot which has been improved with a “service station.” (E2:7) The “service station” was the original design for the improvement, but by January 1, 2007 the gas tanks had been filled with sand and the gas pumps removed. The improvement is a 252 square foot building that is a mere shell used to house auto parts for the Taxpayer’s tenant who is located in a building on an adjacent lot. The lot has value to the Taxpayer as a place for parking cars; however, it does not have electricity, water, sewer or heat/air conditioning.

The Taxpayer has only put into dispute the valuation of the improvements to the subject property.

The County’s Appraiser testified that he had a new opinion of value based on the testimony and evidence received during the hearing. He opined that a 70% depreciation should be taken of the building and that an adjustment should be made for the lack of heating and air conditioning (HVAC), minus \$375.

The County’s final determination of value is shown on Exhibit 2 page 4. The valuation for the improvement is \$13,142. When this value is reduced by the 70% depreciation the remaining value is \$3,943 (\$13,142 less 70%). The HVAC valuation of \$375 is also subtracted.

The concrete is valued by the County at \$17,325. The total revised valuation for the improvements on the subject property is \$21,268. The total taxable valuation is the valuation of the improvements, \$21,268, plus the land valuation which is not in dispute, \$42,900, for a total taxable valuation for the subject property of \$64,168. The Commission gives great weight to this opinion of actual value offered by the County Appraiser.

The Taxpayer did not provide any evidence or exhibits in support of any other valuation he might propose.

The Commission, upon review of all of the evidence presented, finds that the Taxpayer has provided competent evidence to meet his burden to rebut the presumption that the County Board faithfully performed its duties or acted on sufficient competent evidence to justify its decision. The Commission has reviewed all of the evidence presented and finds that the Taxpayer has shown by the reasonableness of the evidence a different taxable valuation and has proven by clear and convincing evidence that the County Board's decision was arbitrary or unreasonable. The appeal of the Taxpayer is approved to the extent that the taxable valuation of the subject property for 2007 is \$64,168.

**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 proven by competent evidence that the County Board failed to faithfully perform its duties or act upon sufficient competent evidence.

4. 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 ORDERED THAT:

1. The decision of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2007, is vacated and reversed.
2. Actual value of the subject property for the tax year 2007 is:

Land value	\$42,900.00
Improvement value	<u>\$21,268.00</u>
Total value	<u>\$64,168.00.</u>
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 (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 2007.

7. This order is effective for purposes of appeal on August 7, 2008.

Signed and Sealed. August 7, 2008.

Nancy J. Salmon, Commissioner

Robert W. Hotz, Commissioner

William C. Warnes, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.