

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

John W. Sandquist
Appellant,

v.

Chase County Board of Equalization
Appellee

Case No: 10R-106

Decision Reversing the Chase
County Board of Equalization

For the Appellant:

John and Laurie Sandquist,
Taxpayer, Pro Se

For the Appellee:

Arlan Wine
Chase County Attorney

Heard before Commissioners Hotz and Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in the city of Imperial, Chase County, Nebraska. The parcel is improved with a 1,802 square foot split-level home. The legal description of the parcel is found at Exhibit 1.

II. PROCEDURAL HISTORY

The Chase County Assessor determined that the assessed value of the subject property was \$142,665 for tax year 2010. John Sandquist (Taxpayer) protested this assessment to the Chase County Board of Equalization (County Board) and requested an assessed valuation of \$91,332. Based upon recommendations of the Assessor at the time of the Protest proceeding,¹ the County Board determined that the assessed value for tax year 2010 was \$158,994. (E2:6).

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits. The Commission held a hearing on July 12, 2011.

¹ The Assessor's recommendation included adding 80% of the split basement to the gross living area square footage totaling 2,270 square feet, adjusting the effective age to 12 years, and changing physical depreciation to 14%.

III. STANDARD OF REVIEW

When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.” *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

That presumption 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. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.

Id. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.). Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value) . 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).

IV. VALUATION

A. Law

Under Nebraska law,

[a]ctual 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 2009). "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 2009). "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). 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 2009). All real property in [Nebraska] subject to taxation shall be assessed as of January 1. See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009) 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) (Reissue 2009).

B. Summary of the Evidence

The Taxpayer asserted that the 2010 assessment should not have been higher than what he paid for the parcel on June 5, 2008. The price the Taxpayer paid for the property was \$157,500. E2:28. He asserted that despite paying that amount, the actual value of the parcel should have been \$91,332 as of the assessment date of January 1, 2010.

The County Assessor testified that she used the Cost Approach to value the parcel. She explained that her initial assessment indicated a value of \$142,665, and why she made her recommendations to the County Board at the time of the Protest proceeding increasing the value

to \$158,994. E1:1, E2:29. She testified that the property had been updated in 1997, including some new windows, new exterior siding, wiring, and plumbing. A concrete patio was added in 2009. E2:28. She explained that when she conducted a reappraisal for residential properties in Imperial, Nebraska, for the 2009 tax year, the sale of the subject property on June 5, 2008, was included in the two year sales study.

The County Board offered Exhibit 15, a corrected Property Record Card for tax year 2010, indicating value at \$152,858. On this exhibit, prepared by the Chase County Assessor, the effective age is still 12 years and total depreciation is still 18%, but a basement area is listed as 468 square feet and the total area is reduced by 468 to 1,802 square feet ($2,270 - 468 = 1,802$). The Taxpayer did not provide any evidence to rebut the values indicated in Exhibit 15. Exhibit 15 is clear and convincing evidence that the County Board's determination of \$158,994 was arbitrary or unreasonable.

V. EQUALIZATION

A. Law

“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. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991). The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999). Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property. See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999). 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). 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). 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). 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, 303 N.W.2d 307 (1981). If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity. *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).

B. Summary of the Evidence

The Taxpayer provided Property Record Cards for six parcels he alleged were comparable to the subject property. E5-10. Each of these parcels was assessed using the Cost Approach. The most notable difference between the subject property and the Taxpayer's comparables is that the subject property had a much lower rate of depreciation applied to the replacement cost new, resulting in a relatively higher replacement cost new less depreciation. The County Assessor testified that the effective age and the total depreciation were reduced by the fact that the residence had been updated with some new windows, new exterior siding, wiring, and plumbing. No evidence was offered which would suggest that the subject property should have had a depreciation rate similar to any of the comparables offered by the Taxpayer.

The County Assessor also testified that none of the parcels found at Exhibits 5-10 were comparable to the subject property. Three of these parcels had split-level homes like the subject property, but their sizes ranged from 1,616 to 2,500 square feet of gross living area. There was no clear and convincing evidence that the Taxpayer should receive relief based upon equalization with other parcels.

VI. CONCLUSION

The Commission finds that competent evidence has been received to rebut the presumption in favor of the determination made by the County Board. The Commission also finds that there is clear and convincing evidence that the County Board's determination of \$158,994 was arbitrary or unreasonable.² The decision of the County Board is Vacated and Reversed.

VII. ORDER

IT IS ORDERED THAT:

1. The Decision of the Chase County Board of Equalization determining the value of the subject property for tax year 2010 is Vacated and Reversed.
2. That the Assessed value of the Subject property for tax year 2010 is:

Land:	\$3,206
<u>Improvement:</u>	<u>\$149,652</u>
Total:	\$152,858

3. This decision and order, if no appeal is timely filed, shall be certified to the Chase County Treasurer and the Chase County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2010 Cum. Supp.)
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 2010.

² Assessed value, as determined by the county board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the county board of equalization at the protest proceeding.

7. This order is effective for purposes of appeal on November 9, 2011

Signed and Sealed: November 9, 2011.

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2010 Cum. Supp.), other provisions of Nebraska Statute and Court Rules.