

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Christopher Warner,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee,

Case No: 11R-261

Decision Affirming the Determination by
the Sarpy County Board of Equalization

For the Appellant:
Christopher Warner,
Pro Se

For the Appellee:
Kerry Schmid,
Deputy Sarpy County Attorney

Heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in Sarpy County, Nebraska. The parcel is improved with a 4,456 square foot, 1.5 Story lake front home, built in 2004. The legal description of the parcel is found at Exhibit 1, and the property record card for the Subject Property is found at Exhibit 6.

II. PROCEDURAL HISTORY

The Sarpy County Assessor determined that the assessed value of the Subject Property was \$702,946 for tax year 2011, including \$120,000 for land and \$582,946 for the improvement. Christopher Warner protested this assessment to the Sarpy County Board of Equalization (County Board) and requested an assessed valuation of \$555,327, including \$94,800 for the land and \$460,527 for the improvement. The County Board determined that the assessed value for tax year 2011 was \$702,946, including \$120,000 for land and \$582,946 for the improvement.¹

Warner appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. In the Pre-Hearing Conference

¹ Exhibit 1.

Report, the parties stipulated to the receipt of exchanged exhibits. The Commission held a hearing on July 11, 2012.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.² 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."³

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.⁴

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.⁵ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁷ 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.⁸

In an appeal, the commission "may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may

² See, Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.), *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ 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).

⁸ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”⁹ The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”¹⁰

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.¹¹

"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."¹² “Actual value, market value, and fair market value mean exactly the same thing.”¹³ 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.¹⁴ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁵ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁶

⁹ Neb. Rev. Stat. §77-5016(8) (2011 Supp.).

¹⁰ Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

¹¹ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹² Neb. Rev. Stat. §77-112 (Reissue 2009).

¹³ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁴ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁵ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁶ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

B. Summary of the Evidence

The Taxpayer did not dispute actual value of the Subject Property, but instead argued that the taxable value of the subject property should be equalized with the assessed values of properties he asserted to be comparable to the Subject Property.

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.”¹⁷ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁸ 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.¹⁹ In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the subject property and comparable property is required.²⁰ 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.²¹ 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.²² The constitutional requirement of uniformity in taxation extends to both rate and valuation.²³ 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

¹⁷ *Neb. Const.*, Art. VIII, §1.

¹⁸ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹⁹ *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).

²⁰ 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²¹ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²² *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).

²³ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

judgment. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁴

B. Summary of the Evidence

The County Board relied upon a cost approach to value the Subject Property.²⁵ Christopher Warner asserted that use of the cost approach to assess properties in the neighborhood of the Subject Property resulted in over assessments. Warner offered three parcels as comparables, emphasizing that when each comparable parcel sold, it was subsequently assessed for more than its sale price. Warner asserted that such sale prices were direct evidence of the fair market value of each parcel. Warner also asserted that such an assessment process, as applicable to the subject property and these comparables, demonstrated a pattern that amounted to unreasonable and arbitrary assessment practices. Warner requested that the assessed value of the Subject Property for tax year 2011 be reduced based upon these overassessments.

Warner offered Exhibit 17, which included the property record cards for three parcels he deemed comparable to the Subject Property. The first parcel (Comparable 1) sold December 21, 2007,²⁶ for \$425,000.²⁷ Warner compared its sale price of \$425,000 to its assessed value on January 1, 2008, of \$488,602.²⁸ Warner asserted that this was an overassessment that proved that the Subject Property was also overassessed.²⁹ The second parcel (Comparable 2) sold November 19, 2010,³⁰ for \$595,000.³¹ Warner compared its sale price of \$595,000 to its assessed value on January 1, 2011, of \$659,430.³² Warner asserted that this was also an overassessment that demonstrated that the Subject Property was overassessed.³³ The third parcel (Comparable 3) sold May 28, 2009,³⁴ for \$379,000.³⁵ Warner compared its sale price of

²⁴ *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).

²⁵ Exhibit 6.

²⁶ This sale occurred more than four years prior to the assessment date of January 1, 2011.

²⁷ Exhibit 17:2-5.

²⁸ Exhibit 17:2. The Commission notes that the January 1, 2011 assessment of the same parcel was \$471,274. Exhibit 17:2.

²⁹ Warner concluded this was a 13% overassessment as of January 1, 2008.

³⁰ This sale occurred less than two months prior to the assessment date of January 1, 2011.

³¹ Exhibit 17:10:13.

³² Exhibit 17:2.

³³ Warner concluded this was an 11% overassessment as of January 1, 2011.

³⁴ This sale occurred approximately 19 months prior to the assessment date of January 1, 2011.

³⁵ Exhibit 17:6-9.

\$379,000 to its assessed value on January 1, 2010, of \$424,075.³⁶ Warner asserted that this too was an overassessment that proved that the Subject Property was also overassessed.³⁷

Warner's equalization argument is misguided. It starts with the assumption that the sale price for each comparable parcel was equal to fair market value. "It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value."³⁸ Even if the sale price for each of the three parcels was indicative of actual value, it would need to be compared to the 2011 assessment, not a prior year's assessment. The prior year's assessment is not relevant to the subsequent year's valuation.³⁹

When comparing the attributes of the three parcels to the Subject Property, no adjustments were made for the differences between the comparable properties and the Subject Property. For example, Comparable 1 was a Ranch style house, not a 1.5 story like the Subject Property, with nearly 1,800 square feet less living space. Comparable 3 had a smaller lot than the Subject Property, and was not a lakefront property, as was the subject property. Comparable 2 was the most similar to the Subject Property, but had a smaller lot and 314 fewer square feet of living area. Without adjusting for these differences, a comparison of the 2011 assessed values of the Subject Property and the comparable parcels has little meaning. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.⁴⁰ The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.⁴¹ The comparison of assessed values of dissimilar parcels is not recognized as an appropriate approach.

As noted above, with each of the three parcels, the 2011 assessment was higher than the sale price. Therefore, the evidence presented would appear to demonstrate that the Subject Property

³⁶ Exhibit 17:6. The Commission notes that the January 1, 2011 assessment of the same parcel was \$420,260. Exhibit 17:6.

³⁷ Warner concluded this was a 26% overassessment as of January 1, 2010.

³⁸ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

³⁹ *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

⁴⁰ Neb. Rev. Stat. §77-112 (Reissue 2009).

⁴¹ *Id.*

is assessed at a disproportionately low amount, as compared to the other parcels. This is the opposite of what is required to be proven to obtain relief on equalization grounds under Nebraska Law. In order to achieve a more uniform ratio of assessed value to market value between the Subject Property and the three parcels for purposes of equalization a higher, not lower, assessment of the Subject Property for tax year 2011 would be necessary.⁴²

VI. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the Decision of the County Board is affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Sarpy County Board of Equalization determining the value of the subject property for tax year 2011 is affirmed.
2. The assessed value of the Subject Property for tax year 2011 is:

Land	\$120,000
Improvement	<u>\$582,946</u>
Total	\$702,946

3. This decision and order, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2011 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 2011.

⁴² The Commission does not have jurisdiction to order a taxable value higher than that determined by the County Board because the Taxpayer did not receive notice of a higher taxable value. Title 442 Neb. Admin. Code, ch. 5 §016.02A (6/11).

7. This order is effective for purposes of appeal on July 23, 2012.

Signed and Sealed: July 23, 2012.

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 (2011 Supp.), other provisions of Nebraska Statute and Court Rules.