

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

Robert B. Reynolds,  
Appellant,

v.

Keith County Board of Equalization,  
Appellee

Case Nos: 09R-026, 10R-013

Decision Affirming the Determination of the  
County Board of Equalization

**For the Appellant:**

Mike Samuelson,  
McGinley, O'Donnell, Reynolds, & Korth, P.C., L.L.O

**For the Appellee:**

Randy Fair  
Keith County Attorney

Heard before Commissioners Hotz & Salmon

**I. THE SUBJECT PROPERTY**

The Subject Property is a parcel consisting of leased public land and a residential improvement near Lake McConaughy in Keith County, Nebraska. The parcel is owned by Central Nebraska Public Power and Irrigation District (District) and is subject to a lease agreement. The privately-owned improvement on the parcel is a 3,030 square foot residence. The legal description of the parcel is found at Exhibit 1.

**II. PROCEDURAL HISTORY**

The Keith County Assessor determined that the assessed value of the subject property was \$389,245 for both tax years 2009 and 2010, including a land value of \$50,000 and an improvement value of \$339,245 (E1:1 in each appeal). Robert Reynolds (Taxpayer) protested these assessments to the Keith County Board of Equalization (County Board) and requested an assessed valuation of \$359,245, including a land value of \$20,000 and an improvement value of \$339,245 (E1:1 in both appeals). The County Board determined that the assessed value for both tax years 2009 and 2010 was \$389,245 (E1:1 in each appeal).

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits.<sup>1</sup> The Commission held a consolidated hearing on July 13, 2011.

### 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

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<sup>1</sup> Exhibit 1 is distinct in each appeal. Exhibits 2-19 were offered and received for both appeals in the consolidated hearing.

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).

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 consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.” Neb. Rev. Stat. §77-5016(8) (2011 Supp.). 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. Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

#### 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).

“Property of public power districts and irrigation districts that is leased to a private party for purposes other than a public purpose ... shall be subject to taxation as if the property was owned by the lessee.” Title 350 Neb. Admin. Code ch. 41 §004.06 (3/15/09).

Leased public property, other than property leased for a public purpose as set forth in subdivision (1)(a) of section 77-202, shall be taxed or exempted from taxation as if the property was owned by the leaseholder. The value of the property shall be determined as provided under section 77-201. The value of the property shall be determined as provided under section 77-201.

Neb. Rev. Stat. §77-202.11(1) (Reissue 2009).

The following property shall be exempt from property taxes: (a) Property of the state and its governmental subdivisions to the extent used or being developed for use by the state or governmental subdivision for a public purpose. For purposes of this subdivision, public purpose means use of the property (i) to provide public services with or without cost to the recipient, including the general operation of government, public education, public safety, transportation, public works, civil and criminal justice, public health and welfare, developments by a public housing authority, parks, culture, recreation, community development, and cemetery purposes, or (ii) to carry out the duties and responsibilities conferred by law with or without consideration. *Public purpose does not include leasing of property to a private party unless the lease of the property is at fair market value for a public purpose.*

Neb. Rev. Stat. §77-202(1)(a) (2011 Supp. (emphasis added)). “Improvements on leased public lands shall be assessed, together with the value of the lease, to the owner of the improvements as real property.” Neb. Rev. Stat. §77-1374 (Reissue 2009).

## **B. Taxpayer’s Argument**

The Taxpayer argues that the purpose of his lease agreement is incidental to the District’s public purposes and that the leasehold should therefore be exempt from taxation. The Taxpayer alternatively contends that the taxable value of the leasehold interest held by the Taxpayer in public land owned by District should be \$0 since rent is paid at fair market value for the leasehold and there is no additional lease value. The Taxpayer does not dispute the taxable value of the improvement on the leased land.

### C. Summary of the Evidence

The District owns numerous residential lots located near Lake McConaughy and leases them to a nonprofit corporation, Lake McConaughy Lessees, Incorporated (Corporation),<sup>2</sup> who subleases leasehold interests in residential lots to the Taxpayer and others. Exhibit 3. The duration of the lease agreement between District and Corporation is for a 31 year term, “with automatic renewal extension at the end of the first year and each successive year, resulting in a thirty one (31) year maximum and a thirty (30) year minimum term unless sooner modified, amended or terminated...” E4:1. The lease agreement allows Corporation to sublease “private residential cabin area” lots. E4:3. Under the lease agreement, a sublessee is required to construct a “residence cabin” within one year following the effective date of the sublease and in compliance with the requirements of the lease. E4:6.

The Taxpayer testified that he entered into a sublease agreement with Corporation on December 4, 2002, for the purpose of maintaining a private residence on the leased land under the terms of the lease. He testified that he resided at the private residence year round. No evidence was offered suggesting that the subject property was used for any purpose other than for the private residential purposes of the Taxpayer. Specifically, no evidence was offered to support a contention that the subject property was used for any public purpose.

The Taxpayer testified that he paid rent under the terms of an amendment to the lease as a “Lake Front Sublessee.” E7:1-2. Per that amendment, the Taxpayer paid annual rent of \$1,000 for April 1, 2008, to March 30, 2009,<sup>3</sup> and \$1,500 annual rent for the term April 1, 2009, to March 30, 2010.<sup>4</sup> E7:2. Other than being the agreed-upon terms of the lease, the basis for those amounts is unknown. However, the Taxpayer asserted that these rents constituted fair market value, and that taxable value on the leasehold should therefore be \$0.

The only evidence of the fair market value of a rental rate was the actual rent paid by the Taxpayer. Even if the rent paid by the Taxpayer under the sublease was based upon an arm’s

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<sup>2</sup> The original lease agreement between District and Corporation, Exhibit 4, was executed in 1985. Exhibits 5-7 are modifications or amendments to the lease agreement. Exhibit 7, Amendment No. 2, contains the lease rent terms effective on both January 1, 2009 and January 1, 2010.

<sup>3</sup> This is the rent applicable to the effective date of January 1, 2009 for tax year 2009.

<sup>4</sup> This is the rent applicable to the effective date of January 1, 2010 for tax year 2010.

length agreement per the terms of the lease and sublease, this is not sufficient evidence that the rent paid constituted market rent. “A leasehold interest may have value if contract rent is less than market rent, creating a rental advantage for the tenant.” *The Appraisal of Real Estate*, Thirteenth Ed., Appraisal Institute (2008), p. 114-115. The reasoning that actual rent paid is equal to market rent is tantamount to an argument that the purchase price is equal to 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.

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

“The purchase price of property, standing alone, is not conclusive of the actual value of the property for assessment purposes; it is only one factor to be considered in considering actual value.” *US Ecology v. Boyd Cty Bd. of Equal.*, 256 Neb. 7, 18, 588 N.W.2d 575, 583 (1999).

The evidence offered by the Taxpayer in support of the assertion that the actual rent paid for the leasehold was equal to market rent is unpersuasive.

The Commission finds that the Taxpayer has not proven by clear and convincing evidence that the lease by the District to the Corporation was for a public purpose or that the sublease rent payments made by the Taxpayer were equal to fair market value for a public purpose. Therefore, the Taxpayer’s assertion that his leasehold interest should be exempt from taxation because his sublease is incidental to the District’s public purposes is without merit. The subject property, which is owned by District and leased to Taxpayer for purposes other than a public purpose, is subject to taxation as if the property was owned by the Taxpayer. Title 350 Neb. Admin. Code, ch 41 §004.06 (3/15/09).

## 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). 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. 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). 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 Subject Property is identified as Lot 66 in the K-1 subdivision (K-1) at Lake McConaughy. E2:48. The Keith County Assessor valued the leaseholds in K-1 as having land values of \$30,000, \$50,000, or \$70,000. E2:18-20. The leasehold of the subject property was valued at \$50,000. E2:48. The Taxpayer offered property record cards for two properties in K-

1, Lots 55-57, E10, and Lot 50, E11.<sup>5</sup> He acknowledged the K-1 leaseholds were valued at \$30,000, \$50,000, or \$70,000, but testified he did not know the basis for each category. The leaseholds for the properties in Exhibit 10 and Exhibit 11 were both valued at \$30,000. E10:1, E11:1.

Cheryl Schiel testified on behalf of the County Board. At the time of the hearing, Schiel was the Keith County Assessor. She testified that each K-1 property had been categorized based upon factors including access to the lake and view of the lake. Schiel explained that in Exhibit 2:13, the shaded lots were determined to have a leasehold value of \$30,000, the unshaded lots were determined to have a leasehold value of \$50,000, and the leasehold value of the lightly shaded lots was determined to be \$70,000, all based upon lake access and view. The Taxpayer did not provide persuasive evidence of the leasehold value of the subject property.

Based upon the foregoing evidence, the Commission finds there is not clear and convincing evidence that the County Board's determination of value violated the uniformity clause of the Nebraska Constitution.

## **VI. CONCLUSION**

The Commission finds that the Taxpayer has not provided 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 the Taxpayer has not provided clear and convincing evidence that the County Board's determination 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 Keith County Board of Equalization determining the value of the subject property for tax years 2009 and 2010 is affirmed.
2. That the Assessed value of the Subject property for both tax years 2009 and 2010 is:

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<sup>5</sup> The proximity of the subject property, Lot 66, to the other K-1 lots is shown at Exhibit 2:13 and Exhibit 2:28.

Land/Leasehold	\$ 50,000
Improvement	<u>\$349,245</u>
Total	<u>\$389,245</u>

3. This decision and order, if no appeal is timely filed, shall be certified to the Keith County Treasurer and the Keith 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 years 2009 and 2010.
7. This order is effective for purposes of appeal on March 26, 2012

Signed and Sealed: March 26, 2012

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Robert W. Hotz, Commissioner

SEAL

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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.