

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Michael Erftmier,
Appellant,

v.

Douglas County Board of Equalization,
Appellee,

Case No: 10R-646

Decision Affirming the Determination by
the Douglas County Board of Equalization

For the Appellant:
Michael Erftmier,
Pro Se

For the Appellee:
Kristin Lynch,
Deputy Douglas County Attorney.

Heard before Commissioners Robert W. Hotz and Thomas D. Freimuth.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in Douglas County, Nebraska. The parcel is improved with a 6,422 square foot, 1.5 Story home, built in 2009. The legal description of the parcel is found at Exhibit 2, page 3, and the property record card for the Subject Property is found in Exhibit 2.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the Subject Property was \$1,348,900 for tax year 2010, including \$289,300 for land and \$1,059,600 for the improvement.¹ Michael Erftmier (Taxpayer) protested this assessment to the Douglas County Board of Equalization (County Board) and requested an assessed valuation of \$977,240, including \$206,600 for the land and \$770,640 for the improvement.² The County Board determined that the assessed value for tax year 2010 was \$1,348,900, including \$289,300 for land and \$1,059,600 for the improvement.³ The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on July 11, 2012.

¹ Exhibit 1:1

² Exhibit 5:1

³ *Id.*

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.⁴ 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."⁵

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.⁶

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.⁷ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁹ 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.¹⁰

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

⁴ 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).

⁵ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁶ *Id.*

⁷ Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

⁸ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁹ 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).

¹⁰ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.”¹¹ 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.”¹²

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.¹³

"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."¹⁴ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁵ 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.¹⁶ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁷ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁸

B. Summary of the Evidence

The Taxpayer purchased the subject property on November 29, 2001, for \$375,000.¹⁹ The Taxpayer offered the home on the parcel for rent from 2002 to 2005. In 2005, the Taxpayer

¹¹ Neb. Rev. Stat. §77-5016(8) (2011 Supp.).

¹² Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

¹³ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁴ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁵ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁶ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁷ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁸ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹⁹ Exhibit 2:3.

razed the improvement on the parcel, and in 2009 a new home was completed on the subject property.

Larry Thomsen testified on behalf of the County Board. Thomsen was a Registered Appraiser, and had been employed with the Douglas County Assessor (Assessor) for 13 years. Thomsen testified that the Assessor used a sales comparison approach to assess the subject property, and that he had supervised the production of an Assessment Report (Report) detailing that assessment.²⁰ The Report notes that an inspection was performed by the Assessor on October 1, 2009, three months prior to the assessment date of January 1, 2010.²¹ The Report stated an Indicated Market Value of \$1,348,874 as of January 1, 2010.²² Thomsen testified that he had reviewed the Report and that he recommended the value of \$1,348,874. The County Board relied upon the value indicated by the sales comparison approach indicated in the Report when making its determination of value.

Michael Erftmier testified on behalf of the Taxpayer. Erftmier asserted that the land value should be reduced to \$206,600, the amount at which the contribution to value of the land was assessed for each tax year from 2003 to 2008.²³ However, the prior year's assessment is not relevant to the subsequent year's valuation.²⁴ The Taxpayer offered no other evidence of the actual value of the land. The Taxpayer also offered no evidence to demonstrate that the actual value of the improvement on the subject property was lower than its assessed value.

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.”²⁵ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁶ The purpose of equalization of

²⁰ The Assessment Report is Exhibit 2.

²¹ Exhibit 2:7.

²² *Id.* The Market Calculation Detail indicated value at \$1,348,875, which the Assessor and the County Board rounded to \$1,348,900. Exhibit 1:1.

²³ Exhibit 2:11.

²⁴ *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).

²⁵ *Neb. Const.*, Art. VIII, §1.

²⁶ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

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.²⁷ 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.²⁸ 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.²⁹ 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.³⁰ The constitutional requirement of uniformity in taxation extends to both rate and valuation.³¹ 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.³²

B. Summary of the Evidence

1. Land

The land component of the subject property was 82,644 square feet in size. The contribution to value of the land was assessed at \$289,300. Therefore, the land was valued at \$3.50 per square foot.³³ Property record cards for three other parcels were in evidence. They indicated the contribution to value of the land components at a range of \$4.27 to \$6.73, significantly higher than the land assessment of the subject property. However, since the area of each of these three parcels was less than 32,000 square feet, less than half the size of the subject property, economies of scale would need to be considered.³⁴ Given these size considerations, it would be expected that the land component of the subject property be assessed at less value per square foot than smaller parcels. Yet the Taxpayer has offered no evidence to quantify these differences.

²⁷ *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).

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

²⁹ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³⁰ *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).

³¹ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³² *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).

³³ \$289,300 / 82,644 = \$3.50.

³⁴ "Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase." Appraisal Institute, *The Appraisal of Real Estate*, 13th Ed. (2008) at 212.

There is not clear and convincing evidence that the land component of the subject property was valued in violation of the Uniformity Clause of the Nebraska Constitution.

2. Improvement

The Taxpayer offered the same comparable properties as he offered at the Protest proceeding.³⁵ However, no evidence was offered to allow the Commission to analyze adjustments made to the parcels to make them comparable to the subject properties.³⁶

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.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Douglas County Board of Equalization determining the value of the subject property for tax year 2010 is affirmed.
2. The assessed value of the Subject Property for tax year 2010 is:

Land	\$ 289,300
Improvement	<u>\$1,059,600</u>
Total	\$1,348,900

3. This decision and order, 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 (2011 Supp.).

³⁵ Exhibit 5:1.

³⁶ "A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject, its price is brought closer to the subject's unknown value." Appraising Residential Properties, 4th Ed., Appraisal Institute, (2007) at pg. 334. The Taxpayer did not provide property record cards for these parcels he considered comparable, as ordered by the Commission in paragraph #10 of its Order For Hearing And Notice Of Hearing.

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.
7. This order is effective for purposes of appeal on October 18, 2012.

Signed and Sealed: October 18, 2012.

Robert W. Hotz, Commissioner

SEAL

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.

Commissioner Freimuth, concurring in the result.

I concur only in the result that the value of the subject property is \$1,348,900 for tax year 2010.

Thomas D. Freimuth, Commissioner