

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Terry & Kay Burggraff,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 11R-340

Decision and Order Affirming the
Determination of the Douglas County Board
of Equalization

For the Appellant:

James E. Lang,
Laughlin Peterson & Lang.

For the Appellee:

Matthew J. Boever,
Deputy Douglas County Attorney.

Heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel improved with a 1,824 square foot home located at 7224 Washington Street in Omaha, Douglas County, Nebraska. The Property Record Card for the Subject Property, which contains a legal description of the parcel, is found at Exhibit 2.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the Subject Property was \$162,900 for tax year 2011. Terry & Kay Burggraff (herein referred to as the “Taxpayer”) protested this assessment to the Douglas County Board of Equalization (herein referred to as the “County Board”) and requested an assessed valuation of \$147,500. The County Board determined that the assessed value for tax year 2011 was \$162,900.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (herein referred to as “Commission”). Prior to the hearing, the parties exchanged exhibits and stipulated to the receipt of exchanged Exhibits 2 through 6. The Commission held a hearing on October 23, 2012.

¹ E1.

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 consider all questions necessary to determine taxable value of property as it hears an appeal or

² See, Neb. Rev. Stat. §77-5016(8) (2012 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) (2012 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).

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) (2012 Cum. Supp.).

¹⁰ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

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

¹² *Id.*

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 County Board submitted a Subject Property Assessment Report found at Exhibit 2 for tax year 2011 at the hearing. The Property Record Profile contained in the Assessment Report indicates that Subject Property's residence was constructed in 1969 and remodeled in 1983.¹⁷

Terry Burggraft testified on behalf of the Taxpayer. According to his testimony and the Taxpayer's documentary evidence, the 1983 remodel increased the gross living area of the residence to 1,824 square feet, which is significantly larger than the 1,120 to 1,214 square foot average of most homes in the neighborhood.¹⁸

The County Board's \$162,900 determination for tax year 2011 is based on \$27,500 land valuation and \$135,400 for improvements, which include the residence and a 900 square foot detached garage.¹⁹ The Assessment Report indicates that the County Board's \$135,400 determination attributable to the Subject Property's improvement components is based on a sales comparison approach mass appraisal model derived from multiple regression analysis, which assigns value to physical and locational characteristics of real property based on correlation of such characteristics with market area sales.²⁰

The Assessment Report contains a document entitled "Market Calculation Detail" that sets forth the multiple regression value assigned to each of the various mass appraisal model characteristics that relate to the Subject Property's improvement components.²¹ This document indicates that the County's model **subtracts** the following amounts from the actual value of the Subject Property's residence: (1) \$10,000 based on "fair" condition rating, which is one level below an "average" rating; (2) \$15,000 based on market age; and (3) \$18,459 based on a 12% neighborhood adjustment.²² The document also indicates that the contribution to value of the Subject Property's 900 square foot detached garage is \$18,000.²³

¹⁷ E2:4.

¹⁸ E6:1.

¹⁹ E1:1, E2:3 & E2:4.

²⁰ E2:9. See also, *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 416, 427.

²¹ E2:6. It is the Commission's understanding that the Douglas County Assessor's Office used sales in the "two-year look-back period" prior to tax year 2011 for purposes of constructing the County's model depicted at Exhibit 2, page 6. This two-year look-back period ran from July 1, 2008 to June 30, 2010.

²² E2:6. The 12% neighborhood adjustment is reflected by the Market Calculation Detail document's ".88" entry in the row labeled "NBHD."

²³ E2:6.

The Taxpayer asserted that the actual value of the Subject Property amounted to \$145,154 for tax year 2011.²⁴ In support of this assertion, the Taxpayer presented screen-shots from the Douglas County Assessor's website that depict the assessment history of two alleged comparable properties in close proximity to the Subject Property.²⁵ The Taxpayer based his \$145,154 opinion of value by multiplying the assessed value per square foot (\$79.58) of the alleged comparable most similar in terms of size times the Subject Property's gross living area (1,824 x \$79.58 = \$145,154).

In further support of his \$145,154 value assertion, the Taxpayer testified that two local real estate brokers rendered opinions of value in the \$150,000-\$155,000 range. He also testified that the brokers opined that the contribution to value of the Subject Property's detached garage amounted to \$2,500.

The Taxpayer testified that he constructed most of the detached garage himself, and that he paid approximately \$5,000 for materials. He also testified that he worked on evenings and weekends to construct the garage over an approximate one-month period, and that a friend installed a heating, ventilating and air-conditioning system in the structure. The Taxpayer further stated that the garage, which he uses mainly for storage, includes a cement foundation and fluorescent overhead lighting. He also stated that the garage does not include running water.

The Assessment Report states that the Taxpayer refused an inspection.²⁶ The Taxpayer testified that he did not allow an inspection because he determined that it would not be useful.

C. Analysis

The Taxpayer arrived at his \$145,154 opinion of value by multiplying the assessed value per square foot of a nearby alleged comparable property by the total area of the Subject Property. This approach is not a commonly accepted mass appraisal technique for determining the actual value of real property under Nebraska Statutes section 77-112.²⁷

The valuation approaches identified under Nebraska Statutes section 77-112 include the sales comparison approach, the income approach, the cost approach, and other professionally accepted

²⁴ E6:1.

²⁵ E6:2 – E6:5.

²⁶ E2:9.

²⁷ Neb. Rev. Stat. §77-112 (Reissue 2009).

mass appraisal methods.²⁸ The Taxpayer's use of the per square foot assessed value of a nearby property to derive his opinion of value is not identified as an appropriate approach under Nebraska Statutes section 77-112. Additionally, the Taxpayer did not provide evidence that this approach is a professionally accepted mass appraisal or fee appraisal technique. Therefore, while the use of assessed values can be used in the equalization context as discussed below, the Commission is unable to place significant weight on the Taxpayer's opinion for actual value purposes.

The Taxpayer testified that two local real estate brokers rendered opinions of value of the Subject Property in the \$150,000-\$155,000 range. He also testified that the brokers opined that the contribution to value of the Subject Property's detached garage amounted to \$2,500. The real estate brokers did not testify at the hearing, and their written reports were not offered or received in evidence. Thus, the Commission does not place great weight on their Subject Property valuation opinions. The Commission does note, however, that the \$155,000 amount at the top of the brokers' range is not significantly less than County Board's \$162,900 determination for tax year 2011.

As indicated above, the County's mass appraisal model valued the Subject Property's detached garage at \$18,000 for tax year 2011.²⁹ The Commission finds that the Taxpayer did not provide clear and convincing evidence that this valuation is unreasonable or arbitrary.³⁰

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."³¹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.³² The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative

²⁸ Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁹ E2:6.

³⁰ The Commission notes that in the case where the Taxpayer refuses the County's request to inspect the property, the provisions of the Adverse Inference Rule impose a presumption that the results of the inspection would militate against the Taxpayer's interest. See, *Yarpe v. Lawless Distrib. Co.*, 7 Neb.App. 957, 962 - 963, 587 N.W.2d 417, 421 (1998).

³¹ *Neb. Const.*, Art. VIII, §1.

³² *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.³³ 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.³⁴ 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.³⁵ 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.³⁶ The constitutional requirement of uniformity in taxation extends to both rate and valuation.³⁷ 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 [sic].”³⁸ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”³⁹

B. Analysis

The Taxpayer asserted that the Subject Property was overvalued in comparison to the assessed valuations of nearby properties. In support of this assertion, the Taxpayer submitted “Account Information” screen-shots from the Douglas County Assessor’s website for two area properties near the Subject Property.⁴⁰

As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values; or (2) a comparison of the ratio of assessed value to market value for the Subject Property and other real property indicates that the Subject Property was not assessed at a uniform percentage of market value.

³³ *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).

³⁴ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

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

³⁶ *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).

³⁷ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³⁸ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³⁹ *Id.* at 673, 94 N.W.2d at 50.

⁴⁰ E6:2 – E6:5.

The Commission finds that the parcels submitted by the Taxpayer are not similarly situated or comparable for equalization analysis purposes because they do not include a detached garage. The Commission also finds that the Taxpayer did not provide sufficient evidence of the ratio of assessed value to market value with respect to the Subject Property or the alleged comparables to obtain equalization relief.

Finally, the Commission notes that the 2011 assessed value of the Subject Property, excluding the County's \$18,000 detached garage valuation, amounted to \$79.44 per square foot. In comparison, the 2011 assessed value of the parcels submitted by the Taxpayer amounted to \$76.15 and \$79.58 per square foot.⁴¹ Therefore, the Commission finds that the Subject Property's assessment was not grossly excessive in comparison to the two parcels submitted by the Taxpayer.

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. The Commission further finds that there is not clear and convincing evidence that the valuation placed on the Subject Property when compared with similar properties was grossly excessive.

For all of the reasons set forth above, the appeal of the Taxpayer is denied.

VII. 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 2011 is affirmed.⁴²
2. The assessed value of the Subject Property for tax year 2011 is \$162,900.

⁴¹ See, 6:1 – E6:5.

⁴² 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.

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 (2012 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 2011.
7. This order is effective for purposes of appeal on December 30, 2013.

Signed and Sealed: December 30, 2013.

Thomas D. Freimuth, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2012 Cum. Supp.), other provisions of Nebraska Statute and Court Rules.