

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Sandra L. Fournier,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 10R 038

Decision and Order Reversing the Douglas
County Board of Equalization

For the Appellant:
Sandra L. Fournier,
Pro Se

For the Appellee:
Malina M. Dobson,
Deputy Douglas County Attorney

This appeal was heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel improved with a 1,392 square foot residential town home located at 5747 N. 167th Circle, Omaha, Douglas County, Nebraska. The legal description of the parcel is found in the Case File. The property record card for the Subject Property is found at Exhibit 2 and Exhibit 5.

II. PROCEDURAL HISTORY

The Douglas County Assessor (the Assessor) determined that the assessed value of the subject property was \$21,000 for the land component and \$155,300 for the improvement component for tax year 2010. Sandra L. Fournier (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested a taxable value of \$21,000 for the land and \$123,500 for the improvement. The County Board determined that the taxable value for tax year 2010 was \$163,400, consisting of \$21,000 for the land and \$142,400 for the improvement.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits and

¹ E1

submitted a Pre-Hearing Conference Report, as ordered by the Commission. The Commission held a hearing on January 28, 2014.

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) (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).

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) (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 Assessor utilized the cost approach to assess the Subject Property.¹⁷ On March 18, 2010, the Assessor conducted external and internal inspections of the Subject Property.¹⁸ Based upon the inspection, the Assessor made corrections regarding basement finish and a design factor. The County Board appeared to rely upon a Cost Detail for the improvement that reflected these corrections.¹⁹

At the hearing before the Commission, the Taxpayer called Larry Thomsen to testify. Thomsen testified that he was a supervisor for residential assessments for the Assessor. Thomsen agreed with the corrections previously made regarding the basement finish and a design factor, and he testified that line items in the Cost Detail for an “Interior Adjustment” and an “Open Slab” should also be corrected. In both cases, removing these adjustments would also decrease the assessed value of the improvement. The Commission finds that the testimony of Thomsen was credible.

Sandra Fournier testified that in addition to these corrections the value of the improvement should be further reduced due to water damage to the dining room wood floor and a window that happened in 2008. Fournier provided photographs of the damage but did not quantify the effect of the damage on the actual value of the improvement. Thomsen testified that he also could not quantify what effect the damage to the floor and windows would have on the actual value of the improvement. The Commission finds that since the inspection of the Subject Property was conducted after the damage to the dining room floor and windows, the condition rating of good that was assigned by the appraiser would have contemplated the damage in relation to the condition of the entire improvement. The Commission also finds that no further adjustment should be made regarding the dining room floor and windows since the effect of the damage on the actual value of the improvement was not quantified.

¹⁷ E2:15.

¹⁸ E2:9, E2:11.

¹⁹ E2:16.

Therefore, the Commission finds that the actual value of the improvement component of the Subject Property is \$128,014.²⁰

Fournier did not contest the assessment of the land component of the Subject Property at \$21,000.

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.”²¹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²² 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.²³ 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.²⁴ 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.²⁵ 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.²⁶ The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁷ If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation

²⁰ Using E2:16, the Commission makes the following calculation:

Total Replacement Cost New Without Add Ons	\$135,673
Minus Physical Depreciation of 4.5%	<u>- \$6,105</u>
	\$129,568
Minus Functional Obsolescence of 5%	<u>- \$6,478</u>
	\$123,090
Times Neighborhood Adjustment Factor of 1.04	<u>x 1.04</u>
Replacement Cost New Less Depreciation	<u>\$128,014</u>

²¹ *Neb. Const.*, Art. VIII, §1.

²² *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²³ *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).

²⁴ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²⁵ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁶ *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).

²⁷ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

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].”²⁸ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”²⁹

B. Summary of the Evidence

Fournier testified to her belief that the Subject Property was not equalized as compared to other similar properties. She provided property record cards for fifteen similar properties³⁰ as well as three exhibits she had prepared which summarized the comparisons of these properties to the Subject Property. The Commission has reviewed all of the evidence received in this appeal. With each comparable property, the Assessor used the cost approach. In all instances, the Commission finds that the cost approach data reflects that the comparable properties and the Subject Property were assessed consistent with the requirements of the Uniformity Clause of the Nebraska Constitution.³¹

VI. CONCLUSION

The Commission finds that there is 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 clear and convincing evidence that the County Board’s decision was arbitrary or unreasonable.

For all of the reasons set forth above, the appeal of the determination by the County Board should be vacated and reversed.

VII. ORDER

IT IS ORDERED THAT:

²⁸ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁹ *Id.* at 673, 94 N.W.2d at 50.

³⁰ E7 to E20, E30.

³¹ *Neb. Const.*, Art. VIII, §1.

1. The decision of the Douglas County Board of Equalization determining the value of the Subject Property for tax year 2010 is reversed.³²
2. The taxable value of the Subject Property for tax year 2010 is as follows:

Land	\$21,000
Improvement	<u>\$128,014</u>
Total	\$149,014

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 Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2010.
7. This Decision and Order is effective for purposes of appeal on January 31, 2014.

Signed and Sealed: January 31, 2014

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 (2012 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.

³² Taxable 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.