

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Martin J. Giff,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 15R 0032

Decision and Order

For the Appellant:
Martin J. Giff,
Pro Se

For the Appellee:
Michael A. Smith,
Deputy Sarpy County Attorney

This appeal was heard before Commissioners Steven A. Keetle and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in Sarpy County. The parcel is improved with a 3,886 square foot home and swimming pool. The legal description of the parcel is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 4.

II. PROCEDURAL HISTORY

The Sarpy County Assessor determined that the assessed value of the Subject Property was \$516,263 for tax year 2015. Martin J. Giff (the Taxpayer) protested this assessment to the Sarpy County Board of Equalization (the County Board) and requested an assessed valuation of \$450,000. The Sarpy County Board determined that the taxable value for tax year 2015 was \$516,263.¹

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

¹ Exhibit 1.

parties submitted a Pre-Hearing Conference Report, as ordered by the Commission. The Commission held a hearing on August 29, 2016.

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

² See, Neb. Rev. Stat. §77-5016(8) (2014 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(9) (2014 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).

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.”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 The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹¹

IV. VALUATION 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.¹²

“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.”¹³ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁴ 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.¹⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷

⁹ Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

¹⁰ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

¹¹ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

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

¹³ *Id.*

¹⁴ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁵ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁶ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁷ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

V. EQUALIZATION 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.”¹⁸ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁹ 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.²⁰ 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.²¹ 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.²² 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.²³ The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁴ 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].”²⁵ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁶

VI. FINDINGS OF FACT

The Taxpayer alleged that the assessed value of the land component of the Subject Property was not equalized with the land component of other comparable properties in Sarpy County. The Taxpayer offered testimony regarding the assessed values of two recently sold properties that he

¹⁸ *Neb. Const.*, Art. VIII, §1.

¹⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁰ *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).

²¹ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²² *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²³ *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).

²⁴ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²⁵ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁶ *Id.* at 673, 94 N.W.2d at 50.

alleged were comparable to the Subject Property. He testified that all or a portion of these two properties were subject to special valuation. However, he offered no further evidence and the record before the Commission does not contain the property record files of the two alleged comparable properties.

Properties subject to special valuation are a separate class of property from residential property and are subject to assessment at seventy five percent of special valuation.²⁷ Because the Subject Property was not subject to special valuation, the two alleged comparable properties are not comparable. The Taxpayer has failed to present sufficient evidence to grant relief based on the comparison of these two properties.

The Taxpayer also alleged that the Subject Property was being assessed for an extra-long driveway while other properties in the county that had extra-long driveways were not. The Taxpayer testified that an item for “driveway extra” was added to the County Assessor’s cost sheet in the property record card of the Subject Property for tax year 2015. The Taxpayer offered testimony regarding five properties that he alleged also had extra-long driveways but were not assessed for the line item “driveway extra.” The Taxpayer’s testimony was that while these five properties had long driveways, there were differences between the driveways on the five properties and the driveway on the Subject Property. The record before the Commission does not contain the property record files of these five alleged comparable properties. The Taxpayer has failed to present sufficient evidence to grant relief based on the assessment of driveways.

The Taxpayer next alleged that the Subject Property was being assessed for a swimming pool while other properties in the county with swimming pools were not. The Taxpayer offered testimony that there was a property in the County that had a pool that he believed wasn’t assessed for a pool. The record before the Commission does not contain the property record file of the alleged comparable property. The Taxpayer has failed to present sufficient evidence to grant relief based on the assessment of swimming pools.

²⁷ See, Neb. Rev. Stat. §77-201(3) (Reissue 2009), Neb. Rev. Stat. 77-1342, et. seq. (Reissue 2009)

The Taxpayer has not provided clear and convincing evidence that valuation placed on his 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 a mere error of judgment.

VII. 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 appeal of the Taxpayer is denied.

VIII. 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 2015 is affirmed.²⁸
2. The assessed value of the Subject Property for tax year 2015 is:

Land:	\$120,580
<u>Improvements:</u>	<u>\$395,683</u>
Total:	\$516,263
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 (2014 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this decision and Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.

²⁸ 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.

6. This Decision and Order and order shall only be applicable to tax year 2015.
7. This Decision and Order and order is effective for purposes of appeal on November 3, 2016.²⁹

Signed and Sealed: November 3, 2016

Steven A. Keetle, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.

²⁹ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.