

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Harvey Varenhorst,
Appellant,

v.

Otoe County Board of Equalization,
Appellee.

Case Nos: 14R 290, 15R 0108 & 16R 0151

Decision and Order Affirming the Decisions
of the Otoe County Board of Equalization

For the Appellant:
Harvey Varenhorst,
Pro Se

For the Appellee:
John R. Palmtag,
Deputy Otoe County Attorney

These appeals were heard before Commissioners Robert W. Hotz and Steven A. Keetle.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located at 417 4th Rue, City of Nebraska City, in Otoe County. The parcel is improved with a 936 square foot home. The legal description of the parcel is found at Exhibit 1. A property record card for the Subject Property is found at Exhibit 6, pages 18-19.

II. PROCEDURAL HISTORY

The Otoe County Assessor determined that the assessed value of the Subject Property was \$15,330 for tax year 2014. Harvey Varenhorst (the Taxpayer) protested this assessment to the Otoe County Board of Equalization (the County Board) and requested an assessed valuation of \$9,217. The County Board determined that the taxable value for tax year 2014 was \$15,330.¹

For tax year 2015, the County Assessor determined that the assessed value of the Subject Property was \$27,890. The Taxpayer protested this assessment to the County Board and

¹ Exhibit 1.

requested an assessed valuation of \$11,970. The County Board determined that the taxable value for tax year 2015 was \$27,980.²

The Otoe County Assessor determined that the assessed value of the Subject Property was \$27,890 for tax year 2016. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$11,970. The County Board determined that the taxable value for tax year 2016 was \$27,890.³

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The Commission held a hearing on August 21, 2017.

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

² Exhibit 1.

³ Exhibit 2.

⁴ See, Neb. Rev. Stat. §77-5016(8) (2016 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.*

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 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 The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹³

IV. APPLICABLE 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.¹⁴

“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

⁷ Neb. Rev. Stat. §77-5016(9) (2016 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).

¹¹ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

¹² Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

¹³ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

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

77-1371, (2) income approach, and (3) cost approach.”¹⁵ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁶ 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.¹⁷ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁸ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁹

“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.”²⁰ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²¹ 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.²² 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.²³ 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.²⁴ 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.²⁵ The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁶ 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

¹⁵ *Id.*

¹⁶ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁷ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁸ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²⁰ *Neb. Const.*, Art. VIII, §1.

²¹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²² *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).

²³ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²⁴ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁵ *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).

²⁶ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

judgment [sic].”²⁷ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁸

V. FINDINGS OF FACT

Mr. Harvey Varenhorst testified on behalf of the Taxpayer. Mr. Varenhorst opined that since there had been no updates to the property during the relevant time period, there should be no increase in assessed value. He stated that the property was built in 1940, that a concrete driveway was added in 2010 or 2011, that the property had limited access, that he did not operate the furnace for safety reasons, and that the only heating came from electric space heaters. Mr. Varenhorst also stated that he had placed a for sale sign in the yard for approximately six months in 2016, asking \$17,000, with no offers to purchase. The Taxpayer did not quantify what effect these issues had on the actual value of the Subject Property.

Mr. Varenhorst argued that the gross living area was overstated at 936 square feet because only the bedrooms were finished. He testified that the bathroom and kitchen were unfinished. He argued that the square footage of the gross living area should therefore be reduced to 486 square feet.

Ms. Jennifer Varenhorst-Wohlens also testified on behalf of the Taxpayer. Ms. Varenhorst-Wohlens was a co-owner of the Subject Property and testified that she was familiar with the characteristics of the property. She stated that the property had not had any updates done since January 1, 2014.

Ms. Therese Gruber, the Otoe County Assessor, testified on behalf of the County Board. Ms. Gruber testified that the Subject Property was inspected by the County Assessor on December 28, 2012, and she confirmed that no updates had been made to the property since 2012.

Ms. Gruber stated that she assessed the land component of the Subject Property at \$0.40 per square foot, based upon a 2014 equalization study of land sales and values in the neighborhood of the Subject Property. She testified that the value of the improvement component of the Subject Property was based upon a 2015 reassessment of all residential improvements in Nebraska City.

²⁷ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁸ *Id.* at 673, 94 N.W.2d at 50.

She stated that she compared the Subject Property improvements to other improvements in Nebraska City with similar uses and physical characteristics.²⁹ The County Assessor rated the Subject Property as being in fair+ condition with fair quality construction. It was assessed as having an effective age of 55 years. The County Assessor determined that the improvement depreciation was 70%. Using the cost approach, the replacement cost new of the improvement component of Subject Property was therefore reduced by 70% to determine its value. The Commission has reviewed the property record cards for several other properties the County Assessor used as comparable properties.³⁰ After analyzing the condition, quality, effective age, and deducted depreciation of the improvements on these parcels, the Commission concludes there is not clear and convincing evidence adduced to conclude that the Subject Property was assessed in violation of the Uniformity Clause of the Nebraska Constitution.

VI. CONCLUSIONS OF LAW

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 determinations. The Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For all of the reasons set forth above, the decisions of the County Board should be affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Otoe County Board of Equalization determining the taxable value of the Subject Property for tax years 2014, 2015, and 2016 are affirmed.
2. The taxable value of the Subject Property for tax year 2014 is \$15,330.
3. The taxable value of the Subject Property for tax year 2015 is \$27,980.
4. The taxable value of the Subject Property for tax year 2016 is \$27,890.

²⁹ See, Exhibit 6:18-38, Exhibit 7:27-45, and Exhibit 7:27-45.

³⁰ See, Exhibit 6:18-38, Exhibit 7:27-45, and Exhibit 7:27-45.

5. This Decision and Order, if no appeal is timely filed, shall be certified to the Otoe County Treasurer and the Otoe County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
6. Any request for relief, by any party, which is not specifically provided for by this decision and Decision and Order, is denied.
7. Each party is to bear its own costs in this proceeding.
8. This Decision and Order and order shall only be applicable to tax years 2014, 2015, and 2016.
9. This Decision and Order and order is effective for purposes of appeal on September 1, 2017.³¹

Signed and Sealed: September 1, 2017

Robert W. Hotz, Commissioner

SEAL

Steven A. Keetle, Commissioner

³¹ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.