

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Millard Lumber Inc.,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 15C 0073

Decision and Order Vacating and Reversing
the Decision of the Douglas County Board
of Equalization

For the Appellant:

Jordan W. Adam,
Fraser Stryker PC LLO

For the Appellee:

Jimmie Pinkham, III,
Deputy Douglas County Attorney

This appeal was heard before Commissioners Steven Keetle and James Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel located in Omaha, Douglas County, Nebraska. The 1,547,513 sq. ft. parcel is improved with a 598,737 sq. ft. distribution facility and retail store, as well as a 1,368 sq. ft. storage warehouse. The legal description and Property Record File for the Subject Property is found at Exhibit 6.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the Subject Property was \$7,094,200 for tax year 2015. Millard Lumber Inc. (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$4,618,200. The Douglas County Board determined that the taxable value for tax year 2015 was \$7,094,200.¹

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

¹ Exhibits 1, 3:2.

the Commission. The parties stipulated to the receipt of exchanged exhibits 1 through 23. The Commission held a hearing on February 28, 2018.²

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.³ 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."⁴

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.⁵

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.⁶ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁸ 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.⁹

² The hearing established a common evidentiary record for Case Nos. 15C 0073 and 17C 0029 (Orders issued separately).

³ 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).

⁴ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁵ *Id.*

⁶ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁸ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. Of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

⁹ *Bottorf v. Clay Cty. Bd. of Equal.*, 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.”¹⁰ 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.”¹¹ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹²

For tax year 2015, the Taxpayer asserts that the valuation of the land component of the Subject Property was not equalized with adjacent properties. The Taxpayer did not allege that the assessed value of the improvement component of the Subject Property was not equalized with any other properties. For this reason, the Commission will not discuss the improvements located on the Subject Property or any comparable properties in the record before it in this Order, instead reviewing and analyzing the assessment of the land components only.

IV. 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.”¹³ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁴ 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.¹⁵ 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.¹⁶ Uniformity requires that whatever methods are used to determine actual or taxable value for various

¹⁰ Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

¹¹ Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

¹² Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

¹³ *Neb. Const.*, Art. VIII, §1.

¹⁴ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹⁵ *MAPCO; Cabela's Inc. v. Cheyenne County Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

¹⁶ *Cabela's Inc.*

classifications of real property, the results must be correlated to show uniformity.¹⁷ 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.¹⁸ The constitutional requirement of uniformity in taxation extends to both rate and valuation.¹⁹ 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].”²⁰ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²¹ “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”²²

B. Summary of the Evidence

The Taxpayer alleged that the assessed value of the land component of the Subject Property was not equalized with the land component of a nearby property owned by Omaha Business Park (Parcel 208).²³ The Subject Property and Parcel 208 are located in the same subdivision, almost adjacent to each other, separated only by a green space, and were once part of an industrial complex owned and used by a single entity. The Subject Property and Parcel 208 are both industrial land and are of similar size.²⁴ For tax year 2015 the land component of the Subject Property was assessed at \$2.10 per square foot while the land component of Parcel 208 was assessed at \$.50 per square foot.²⁵ The Commission finds that the land component of the Subject Property and the land component of Parcel 208 are similarly situated and comparable. The Commission further finds that the assessed value of the land component of the Subject Property is grossly excessive when compared to the assessed value of the land component of Parcel 208.

¹⁷ *Banner Cty. v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹⁸ *Equitable Life v. Lincoln Cty. Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

¹⁹ *First Nat. Bank & Trust Co. v. Cty. of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²⁰ *Newman v. Cty. of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²¹ *Id.* at 673, 94 N.W.2d at 50.

²² *Scribante v. Douglas Cty. Bd. of Equal.*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

²³ See E7, the parcel ID of this property is R1919870208, referred to as Parcel 208.

²⁴ See, E6 and E7. See also E8.

²⁵ See E13

The Commission finds that the equalized value of the land component of the Subject Property should be \$773,800.²⁶

V. 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 decision of the County Board is vacated and reversed.

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 2015 is vacated and reversed.²⁷
2. The taxable value of the Subject Property for tax year 2015 is:

Land:	\$ 773,800
<u>Improvements:</u>	<u>\$3,844,400</u>
Total:	\$4,618,200
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 (2016 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 2015.

²⁶ 1,547,513 sq. ft. x \$.50 per sq. ft. = \$773,757 rounded to \$773,800.

²⁷ 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.

7. This Decision and Order is effective for purposes of appeal on October 26, 2018.²⁸

Signed and Sealed: October 26, 2018

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner

²⁸ 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.