

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Millard Lumber Inc.,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17C 0129

Decision and Order Affirming 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 parcel is improved with a 609,633 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 19.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the Subject Property was \$13,496,200 for tax year 2017. Millard Lumber Inc. (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$9,410,735. The Douglas County Board determined that the taxable value of the Subject Property for tax year 2017 was \$13,496,200.¹

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 Exhibit 14.

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. 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).

⁹ *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.”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 2017, the Taxpayer asserts that the valuation of the improvement component of the Subject Property was not equalized with adjacent properties.

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 classifications of real property, the results 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

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 Cty. Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

¹⁶ *Cabela's Inc.*

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).

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 improvements located on the Subject Property was not equalized with the assessed value of the improvement located on a nearby parcel owned by Omaha Business Park (Parcel 208).²³ The land components of 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 land components of the Subject Property and Parcel 208 are both industrial lots of similar size and assessed at the same per square foot amount for tax year 2017.²⁴

Brent Reeder, the President of Sigma Corp. Inc., a general contractor familiar with the Subject Property and Parcel 208, testified on behalf of the Taxpayer. Mr. Reeder testified that the improvements on the Subject Property and Parcel 208 were constructed at the same time and used in an industrial manufacturing operation. Mr. Reeder testified that his company was the general contractor that completed the renovation of the Subject Property’s improvement components to meet the needs of the Taxpayer’s business, which involves retailing/wholesaling lumber and building materials. Mr. Reeder testified that his company did some, but not all, of the contracting work on the improvement components of Parcel 208, as the owner of Parcel 208 also utilized other contractors on a rotating basis. Mr. Reeder testified that he believed the

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 E20, the parcel ID of this property is R1919870208, referred to as Parcel 208.

²⁴ See, E19, E20, and E21. See also E13 indicating that based on the numbers found on the Property Record Files the assessed values for the land component of the Subject Property and Parcel 208 are both \$3.00 per square foot.

improvements on the Subject Property and the improvements on Parcel 208 were of the same quality and condition, although he was unfamiliar with the use of those terms for appraisal purposes. Mr. Reeder testified that he believed that the improvements on the Subject Property and the improvements on Parcel 208 would compete for the same tenants.

The Property Record File (PRF) for the Subject Property and Parcel 208 indicate that both of these parcels are improved with more than one building for tax year 2017 but that the County has only attributed value to the main building on each parcel.²⁵

The Subject Property is improved with a 609,633 square foot Distribution Warehouse built in 1958 and rated Average quality and Average condition. The improvement on the Subject Property has 602,753 square feet protected by fire sprinklers and 35 foot ceiling heights, 80,000 square feet of heavy duty concrete paving, and 350,000 square feet of asphalt parking lot. Additionally, the Subject Property has a radiant heating system, which Mr. Reeder testified is more efficient than a forced air system for heating large spaces.

Parcel 208 is improved with a 976,015 square foot Storage Warehouse (366,382 square feet larger than the Subject Property), which was also built in 1958 and rated Average quality but has a lower condition rating of Fair. Despite its larger size, the improvement on Parcel 208 has only 569,000 square feet protected by fire sprinklers, 30 foot ceilings, 30,000 fewer square feet of heavy duty concrete paving, and the same size asphalt parking lot as the Subject Property. Parcel 208 also has a less efficient forced air hearing system.

While the Taxpayer alleges that the improvements on the Subject Property and Parcel 208 are comparable and should therefore be assessed at the same amount per square foot, the evidence before the Commission does not support that contention. Parcel 208 is over 350,000 square feet larger than the Subject Parcel. The Subject Property also has a better condition rating, more area protected by fire sprinklers, more area of heavy duty concrete paving, and a more efficient heating system than Parcel 208, all of which would support a higher assessed value per square foot. Based on the differences between the Subject Property and Parcel 208, the

²⁵ E19 & E20.

Commission finds that there is not clear and convincing evidence that these improvements are substantially similar for purposes of an equalization analysis.

V. 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.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Douglas County Board of Equalization determining the taxable value of the Subject Property for tax year 2017 is affirmed.²⁶
2. The taxable value of the Subject Property for tax year 2017 is:

Land:	\$ 4,320,300
<u>Improvements:</u>	<u>\$ 9,175,900</u>
Total:	\$13,496,200
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 2017.
7. This Decision and Order is effective for purposes of appeal on October 26, 2018.²⁷

²⁶ 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.

²⁷ 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.

Signed and Sealed: October 26, 2018

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner