

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Harvey Varenhorst,  
Appellant,

v.

Otoe County Board of Equalization,  
Appellee.

Case Nos: 17R 0078 & 18R 0203

Decision and Order  
Reversing the Determinations of the  
Otoe County Board of Equalization

**For the Appellant:**  
Harvey Varenhorst,  
Pro Se

**For the Appellee:**  
Jennifer Panko-Rahe,  
Otoe County Attorney

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Property is a residential parcel located in Otoe County; the land component of the parcel was assessed as being 21,000 square feet for tax year 2017 and increased to 24,780 for tax year 2018.<sup>1</sup> The parcel is improved with a 936 square foot<sup>2</sup> berm house and a second, uninhabitable house that is used as a storage shed. The legal description and property record cards for the Subject Property are found at Exhibit 4 (tax year 2017) and Exhibit 6 (tax year 2018).

**II. PROCEDURAL HISTORY**

The Otoe County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$32,440 for tax year 2017.<sup>3</sup> Harvey Varenhorst (the Taxpayer) protested this assessment to the Otoe County Board of Equalization (the County Board) and requested an assessed valuation of \$17,340.<sup>4</sup> The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$32,440.<sup>5</sup>

---

<sup>1</sup> Exhibit 11. Testimony was given that the 2018 measurement corrected an assessment error made for tax year 2017.

<sup>2</sup> The parties disagreed as to the square footage of the house; as discussed below, we find that the house is 936 square feet.

<sup>3</sup> Exhibit 1.

<sup>4</sup> Id.

<sup>5</sup> Id.

The County Assessor determined that the assessed value of the Subject Property was \$34,010 for tax year 2018.<sup>6</sup> The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$19,240.<sup>7</sup> The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$34,010.<sup>8</sup>

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on January 15, 2020, with Commissioner Hotz presiding. Harvey Varenhorst, Jennifer Varenhorst, Greg Wohlers, and County Assessor Christina Smallfoot testified at the hearing. Exhibits 15, 16, and 17 were admitted by stipulation of the parties. In the course of the hearing, Exhibits 1 through 14 were admitted, and proposed Exhibit 18 was not admitted, for the reasons described on the record.

### III. STANDARD OF REVIEW

The Commission's review of a determination by a county board of equalization is *de novo*.<sup>9</sup> 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."<sup>10</sup>

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.<sup>11</sup>

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

---

<sup>6</sup> Exhibit 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See Neb. Rev. Stat. §77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>10</sup> *Brenner* at 283, 811.

<sup>11</sup> *Id.*

arbitrary.<sup>12</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>13</sup>

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>14</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.<sup>15</sup>

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.<sup>16</sup> The Commission may take notice of judicially cognizable facts, 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.<sup>17</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>18</sup>

#### **IV. VALUATION AND EQUALIZATION**

##### **A. Law**

Under Nebraska law,

Actual 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.<sup>19</sup>

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

---

<sup>12</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

<sup>13</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>14</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. 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 Equal. of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>15</sup> *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>16</sup> Neb. Rev. Stat. §77-5016(8) (Reissue 2018).

<sup>17</sup> Neb. Rev. Stat. §77-5016(6) (Reissue 2018).

<sup>18</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

<sup>19</sup> Neb. Rev. Stat. §77-112 (Reissue 2018).

77-1371, (2) income approach, and (3) cost approach.<sup>20</sup> Actual value, market value, and fair market value mean exactly the same thing.<sup>21</sup> 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.<sup>22</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>23</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>24</sup>

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 the Nebraska Constitution.<sup>25</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>26</sup> 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.<sup>27</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>28</sup> If taxable values are to be equalized it is necessary for the Taxpayer to establish by clear and convincing evidence that the valuation placed on the Subject Property, when compared with valuations placed on other similar properties, is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.<sup>29</sup>

## **B. Facts & Analysis**

The Taxpayer alleged that details about the size, quality, condition, and amenities of the Subject Property used by the County Assessor to determine the value of the Subject Property were incorrect, that he should not be taxed for a portion of the land that was not accessible by vehicle from the road, and that his land value was not equalized with the land value of a nearby parcel.

---

<sup>20</sup> *Id.*

<sup>21</sup> *Omaha Country Club* at 180, 829.

<sup>22</sup> Neb. Rev. Stat. §77-131 (Reissue 2018).

<sup>23</sup> See Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

<sup>24</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2018).

<sup>25</sup> *Neb. Const.*, Art. VIII, §1.

<sup>26</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>27</sup> *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).

<sup>28</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>29</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

The County Assessor testified that the last internal inspection of the Subject Property was performed in 2012. Subsequent inspections have been limited to external inspection and measurement of the buildings on the Subject Property. The Taxpayer and each of his witnesses testified that no improvements have been made to the Subject Property since the last internal inspection in 2012. The Taxpayer and Jennifer Varenhorst testified that they measured the Subject Property internally in 2017, and they believed the total square footage to be 635 square feet. However, nothing in the record clarifies what method was used by the Taxpayer and Ms. Varenhorst to determine what area should be measured, and we were not persuaded that the County Assessor's external measurements were incorrect.

The County Assessor assessed the Subject Property using the cost approach.<sup>30</sup> For both tax years in issue, the County Assessor determined that the residence was of fair quality<sup>31</sup> and fair-plus condition.<sup>32</sup> The Taxpayer's witnesses testified that portions of the Subject Property had painted cinderblock walls rather than drywall and that certain areas of the house had holes in the ceiling and exposed pipes for plumbing. According to the Marshall & Swift *Residential Cost Handbook*, "The basic residence cost includes a drywall finish on all interior walls and ceilings."<sup>33</sup> Both low quality and fair quality homes include drywall finish on walls.<sup>34</sup> However, the Taxpayer did not offer or elicit evidence to quantify the impact of painted cinderblock walls as opposed to painted drywall on the construction cost or per square foot market value of the Subject Property. As a result, we are unable to determine what adjustment, if any, should be made to account for the cinderblock walls. Similarly, the Taxpayer's witnesses testified that the residence had a "three-quarters" bath (i.e., without a bathtub) rather than a full bath. The Taxpayer did not offer or elicit any evidence to quantify what effect this would have on the assessed value of the Subject Property; therefore, we are unable to determine what adjustment, if any, should be made.

---

<sup>30</sup> See Exhibit 4 and Exhibit 6.

<sup>31</sup> The quality rating of a residence reflects the quality of materials and workmanship in construction. See Marshall & Swift, *Residential Cost Handbook*, December 2019, page 6. For fair quality residences, "overall quality of materials and workmanship is below average, [but] these houses are not substandard[.] Interior finish is plain with few refinements. Design is from stock plans, and ornamentation is usually limited to the front elevation." *Residential Cost Handbook*, December 2018, page Fair-1.

<sup>32</sup> The condition rating of a residence reflects wear due to age and the need for maintenance and repairs. For residences in fair condition, "Much repair [is] needed. Many items need refinishing or overhauling, deferred maintenance [is] obvious, inadequate building utility and services all shortening the life expectancy and increasing the effective age." Marshall & Swift, *Residential Cost Handbook*, December 2019, page E-6.

<sup>33</sup> Marshall & Swift, *Residential Cost Handbook*, December 2019, page 8.

<sup>34</sup> Marshall & Swift, *Residential Cost Handbook*, December 2018, page Low-1 & page Fair-1.

The Subject Property was assessed as having a forced air HVAC furnace for tax years 2017 and 2018.<sup>35</sup> However, the Taxpayer testified that this furnace was not functional in either tax year; instead, he used space heaters to heat the house. The County Assessor testified that removing the forced air furnace and adding space heaters would result in a \$1,140 reduction to the value of the Subject Property for each tax year. Accordingly, the improvement value of the Subject Property should be \$22,900 for tax years 2017 and 2018.<sup>36</sup>

The Subject Property is a single parcel on three lots: Lot 9, Lot 10, and Lot 11; for tax year 2018, the county also added land previously designated as street to the parcel. The parcel appears to contain two driveways;<sup>37</sup> according to the Taxpayer's testimony, these are both located on Lot 9.<sup>38</sup> We find no merit in the Taxpayer's contention that he should not be taxed for the two lots that do not have road access. The three lots are contiguous and constitute a single residential parcel. The combined size of the three lots and the land added in tax year 2018 is slightly more than half an acre. We are not indifferent to the personal mobility issues described by the Taxpayer in his testimony, but the fact that some of the lots must be accessed through the yard does not render those portions of the parcel without value.

According to the County Assessor's testimony, for residential parcels in the market area of the Subject Property, the first 20,000 square feet are valued at \$0.40 per square foot, the next 30,000 square feet are valued at \$0.20 per square foot, and any square footage in excess of 50,000 is valued at \$0.10 per square foot. The County Assessor testified that, after the addition to the parcel for tax year 2018, the land in excess of 20,000 square feet was incorrectly assessed at \$0.40 per square foot rather than \$0.20 per square foot. For this reason, the County Assessor recommended that we reduce the value of the land component of the Subject Property from \$9,970 to \$8,690.

However, the Taxpayer's exhibits include a Property Record Card for a parcel located near the Subject Property, which indicates that a 7,000 square foot lot was valued at \$1,400, or \$0.20 per square foot, for both tax years 2017 and 2018.<sup>39</sup> The Taxpayer is entitled to have his parcel

---

<sup>35</sup> Exhibit 4:2, Exhibit 6:2.

<sup>36</sup> According to Exhibit 1:1 and Exhibit 2:1, the improvement value of the Subject Property was \$24,040 for both tax years. \$24,040 - \$1,140 = \$22,900.

<sup>37</sup> See Exhibit 13:8 and 13:11.

<sup>38</sup> See Exhibit 11:1 (parcel map) and Exhibit 14:1 (aerial).

<sup>39</sup> Exhibits 15:15-18 and 17:18-19.

equalized with the nearby parcel at \$0.20 per square foot for the first 20,000 square feet.<sup>40</sup> The land of the Subject Property was 21,000 square feet in tax year 2017 and 24,780 square feet in tax year 2018.<sup>41</sup> The equalized value of the land component of the Subject Property should be \$4,200 for tax year 2017 and \$4,956 for tax year 2018.<sup>42</sup>

## 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 determinations. The Commission also finds that there is 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 are vacated and reversed.

## VI. 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 2017 and 2018 are vacated and reversed.<sup>43</sup>

2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 4,200
<u>Improvements</u>	<u>\$22,900</u>
Total	\$27,100

3. The taxable value of the Subject Property for tax year 2018 is:

Land	\$ 4,956
<u>Improvements</u>	<u>\$22,900</u>
Total	\$27,856

4. 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 (Reissue 2018).

---

<sup>40</sup> Square footage from 20,000 to 50,000 square feet should also be valued at \$0.20 under the County Assessor's methodology.

<sup>41</sup> Exhibit 11:1.

<sup>42</sup>  $21,000 \times \$0.20 = \$4,200$ ;  $24,780 \times \$0.20 = \$4,956$ .

<sup>43</sup> 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.

5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2017 and 2018.
8. This Decision and Order is effective for purposes of appeal on January 23, 2020.<sup>44</sup>

Signed and Sealed: January 23, 2020

---

Robert W. Hotz, Commissioner

SEAL

---

James D. Kuhn, Commissioner

---

<sup>44</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.