

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

Keith Baker,
Appellant,

Case Nos: 17R 0109 & 18R 0074

v.

Douglas County Board of
Equalization,
Appellee.

**DECISION AND ORDER
AFFIRMING THE DECISION
OF THE DOUGLAS COUNTY
BOARD OF EQUALIZATION**

For the Appellant:

Ralph Peppard,
Attorney

For the Appellee:

Jennifer D. Chrystal-Clark,
Deputy Douglas County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property is an improved residential parcel located at 9810 N. 31st Street, Omaha, Douglas County, Nebraska. The parcel is improved with a 1,646 square foot ranch-style home. The legal description of the parcel is found at Exhibit 3. The property record card for the Subject Property is found at Exhibits 3 and 4.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined the assessed value of the Subject Property was \$208,700 for both tax years 2017 and 2018. Keith Baker (the Taxpayer) protested these assessments to the Douglas County Board of Equalization (the County Board). The County Board

determined the taxable value of the Subject Property for both tax years 2017 and 2018 was \$208,700.¹

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on August 30, 2021. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. Exhibits 1 through 5 were received into evidence, with the exception of pages 2 through 8 of Exhibit 5.

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,

¹ Ex 1.

² 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).

³ *Brenner* at 283, 811.

⁴ *Id.*

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 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

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

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

⁵ Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ 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).

⁸ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

⁹ Neb. Rev. Stat. §77-5016(8) (Reissue 2018).

¹⁰ Neb. Rev. Stat. §77-5016(6) (Reissue 2018).

¹¹ Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

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

V. 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.”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

¹² Neb. Rev. Stat. §77-112 (Reissue 2018).

¹³ *Id.*

¹⁴ *Omaha Country Club* at 180, 829.

¹⁵ Neb. Rev. Stat. §77-131 (Reissue 2018).

¹⁶ See Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

¹⁷ Neb. Rev. Stat. §77-201(1) (Reissue 2018).

¹⁸ *Neb. Const.*, Art. VIII, §1.

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

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 the valuation placed on his [or her] 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.”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 & CONCLUSIONS OF LAW

A. Summary of the Evidence

The Taxpayer primarily argued an alleged comparable property across the street from the Subject Property (“Taxpayer Comp”) at 915 N. 31st Street was not considered by the County Assessor or the County Board as a comparable to the Subject Property at the time of the

²⁰ *MAPCO; Cabela's Inc. v. Cheyenne County Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

²¹ *Cabela's Inc.*

²² *Banner County v. State Bd. of Equal.*, 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.

protest proceeding, and that the assessed value of the Taxpayer Comp, as well as the remainder of Exhibit 5 that was received into evidence, demonstrates that the County Board's determination of the taxable value of the Subject Property is arbitrary and unreasonable. Specifically, the taxpayer argued the Subject Property and the Taxpayer Comp were in virtually the same location, and substantially similar in size and age, but that the Taxpayer Comp had an assessed value that was approximately \$58,000 lower than the Subject Property.

The Taxpayer acknowledged the Taxpayer Comp had differences, including a lack of any finished basement, whereas the Subject Property had 648 square feet of finished basement, as well as an additional half-bath and a walkout basement.²⁷ The Taxpayer asserts that these differences should be offset by the Taxpayer Comp's brick exterior and additional square footage.

The County Board called Kurt Skradis to testify. Skradis has been employed by the County Assessor for 23 years and is currently a Real Estate Specialist for the County Assessor. He is also a licensed appraiser.

Skradis stated the Taxpayer Comp is situated in a different market area, despite its location across the street from the Subject Property. He asserted the Taxpayer Comp being located in a different market area is primarily what made it not comparable to the Subject Property. The Taxpayer Comp is located in the Wyman Heights market area, whereas the Subject Property is located in the Florence Field market area. Skradis testified that a different mass appraisal model was used to assess each of these market areas. He also noted that the Taxpayer Comp would not be truly comparable due to the differences in basement finish as well as the Subject Property having a walkout basement and an additional half-bath.

Skradis further stated the assessed value of the Subject Property was in line with the value of recent sales within the market area of the

²⁷ Exhibit 5:20; Exhibit 4:4.

Subject Property.²⁸ He also noted the land component of the Subject Property's market area had been reassessed in 2017 to bring its value closer to market value. Skradis testified the County Board's valuations of the Subject Property for tax years 2017 and 2018 were appropriate.

B. Analysis

Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.²⁹ Skradis testified the Taxpayer Comp is not comparable to the Subject Property primarily because of its location in a different market area. We disagree. The County Assessor drew the market area boundaries and developed a mass appraisal model for each market area. Per those drawn boundaries, the Taxpayer Comp is located in a different market area than the Subject Property. But, despite those boundaries, the fact remains the front yards of both properties abut the market area boundary separating them; they are across the street from one another. And the boundary separating them is simply a neighborhood residential street, not a major thoroughfare or other conspicuous divider. Thus, we find the two properties are comparable in terms of location.

We also find the Subject Property and the Taxpayer Comp are comparable in terms of use; both are residential ranch style homes, and in terms of quality and condition; both are rated by the County Assessor as average quality and average condition.³⁰

However, evidence was received in support of the conclusion that many physical characteristics of the two properties were not comparable. Most notably, the Subject Property had a much bigger

²⁸ Exhibit 3:10-15; 4:11-12.

²⁹ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

³⁰ See, Exhibits 3:6, 4:4, 5:21, and 5:24.

residential lot,³¹ the Subject Property had a walkout basement,³² and the Subject Property had 646 square feet of basement finish,³³ all which added more value to the Subject Property as compared to the Taxpayer Comp.

Evidence was also adduced that the Subject Property had a gross living area of 1,646 square feet³⁴ while the Taxpayer Comp had gross living area of 1,716 square feet,³⁵ the Subject Property had a 240 square foot garage³⁶ while the Taxpayer Comp had a 440 square foot garage,³⁷ and the Subject Property had wood siding while the Taxpayer Comp had brick siding,³⁸ both adding more value to the Taxpayer Comp as compared to the Subject Property.

In addition, when using the Market Calculation Detail, the County Assessor assigned the Subject Property with a neighborhood adjustment (NBHD ADJ) of 1.35, which increased the assessment by 35%, as well as \$20,000 added to its assessed valued due to what is called a “constant.”³⁹

If both properties had been placed in the same market area by the County Assessor these differences in physical characteristics could have been analyzed side-by-side, using either the cost approach or the sales comparison approach. But they weren't. The market areas were drawn for reasons that go beyond the evidence received in this appeal, and the Commission does not have the authority to redraw those boundaries. Moreover, based upon the evidence received, the Commission is unable to properly analyze the differences in physical

³¹ The Subject Property consisted of 31,372 square feet, and the Taxpayer Comp consisted of 11,475 square feet. The Subject Property lot was assessed at \$39,752 and the lot on the Taxpayer Comp was assessed at \$11,475.

³² Exhibit 3:6. The basement walkout was assessed at \$5,000.

³³ Exhibit 3:6. The basement finish was assessed at \$12,960.

³⁴ Exhibit 3:6.

³⁵ Exhibit 5:24. Whether the difference in value of the square footage should be measured in terms of the cost approach unit value of \$98.79 per square foot (Exhibit 5:24) or the sales comparison value of \$35 per square foot (Exhibit 3:6)

³⁶ Exhibit 3:6.

³⁷ Exhibit 5:24.

³⁸ The exterior finish of neither house was separately valued. It could be assumed that the exterior finish was included in the quality rating of the home.

³⁹ Exhibit 3:6.

characteristics and is unable to quantify the differences because the models applied to assess the taxable values for these two residences are significantly different.⁴⁰ These differences are not completely transparent in the record. But, for example, the Market Calculation Detail used to assess the Subject Property appears to be based on the use of a mass appraisal sales comparison approach, and the Non-Commercial Cost Detail used to assess the Taxpayer Comp appears to be based on a mass appraisal cost approach.

Further, the Property Record File provided by the County Board demonstrates the assessment of the Subject Property is in line with the assessments of other property within the market area, based upon the comparable sales listed in the Property Record File.

The Taxpayer has not provided competent evidence to rebut the presumption that the County Board faithfully performed its duties. Nor has the Taxpayer provided clear and convincing evidence to show that the County Board's decisions were arbitrary or unreasonable.

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

For the reasons set forth above, the decisions of the County Board are affirmed.

VIII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the taxable value of the Subject Property for tax years 2017 and 2018 are affirmed.⁴¹

⁴⁰ See, Exhibit 3:6 Market Calculation Detail for the Subject Property, and Exhibit 5:24 Non-Commercial Cost Detail for the Taxpayer Comp.

⁴¹ 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

2. The taxable value of the Subject Property for both tax years 2017 and 2018 is:

Land:	\$ 39,800
<u>Improvements:</u>	<u>\$ 168,900</u>
Total:	\$ 208,700

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 (Reissue 2018).
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 years 2017 and 2018.
7. This Decision and Order is effective for purposes of appeal on May 25, 2023.⁴²

Signed and Sealed: May 25, 2023

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

⁴² 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.