

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Lee A. Boehm,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 17R 0449 & 18R 0282

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

For the Appellant:

Lee A. Boehm,
Pro Se

For the Appellee:

Jennifer D. Chrystal-Clark,
Deputy Douglas 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 Bennington, Douglas County, Nebraska. The parcel is improved with a 3,094 square foot home. The property record file and legal description for the Subject Property are found at Exhibit 3 (2017) and Exhibit 4 (2018).

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the Subject Property was \$299,000 for tax years 2017 and 2018.¹ Lee A. Boehm (the Taxpayer) protested these assessments to the Douglas County Board of Equalization (the County Board). The County Board determined that the taxable value of the Subject Property for tax years 2017 and 2018 was \$299,000.²

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing before a single commissioner on October 24, 2019, and on January 4, 2021, the single commissioner issued a decision affirming the County Board's decisions. On January 28, 2021, the Taxpayer filed a request for rehearing before a panel of the Commission, and on February 3, 2021, the

¹ Exhibits 1, 2.

² *Id.*

Commission issued an order vacating the decision of the single commissioner. A hearing was held on April 6, 2021, with Commissioner Hotz presiding. Exhibits 1 through 4 were admitted without objection. Exhibits 5 and 6 were offered by the Taxpayer, but they were not admitted because they were not exchanged by the deadline established in the Commission's Order for Hearing. Lee Boehm and Kurt Skradis testified at the hearing.

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

The 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

³ 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).

⁴ *Brenner* at 283, 811.

⁵ *Id.*

⁶ Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

⁷ *Omaha Country Club v. Douglas County 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 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).

put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes the County Board’s valuation was unreasonable or arbitrary.⁹

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

IV. APPLICABLE 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.¹³

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.¹⁴ Actual value, market value, and fair market value mean exactly the same thing.¹⁵ Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. 77-201 and has the same meaning as assessed value.¹⁶ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁷ All

⁹ *Botdorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹⁰ Neb. Rev. Stat. §77-5016(8) (Reissue 2018).

¹¹ Neb. Rev. Stat. §77-5016(6) (Reissue 2018).

¹² Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

¹³ Neb. Rev. Stat. §77-112 (Reissue 2018).

¹⁴ *Id.*

¹⁵ *Omaha Country Club* at 180, 829.

¹⁶ Neb. Rev. Stat. §77-131 (Reissue 2018).

¹⁷ See Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.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 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.²⁰ 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.²¹ The constitutional requirement of uniformity in taxation extends to both rate and valuation.²² 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.”²³ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁴

V. FINDINGS OF FACT

The Subject Property is a residential parcel improved with a 1½ story, 3,064 square foot residence. The residence was built in 2005 and features amenities such as a gas fireplace, a wood deck, an open slab porch, and a 769 square foot built in garage. The quality and condition of the Subject Property were both rated “Good” by the County Assessor.

Kurt Skradis has been employed by the Douglas County Assessor for 23 years; he currently works as a Real Estate Specialist for residential properties. He is a licensed appraiser in Nebraska. He was not directly involved in the assessment of the Subject Property for tax years 2017 and 2018. Skradis testified that the Subject Property was assessed for those tax years using Marshall & Swift costing software that accounts for the style and quality of the home being

¹⁸ Neb. Rev. Stat. §77-201(1) (Reissue 2018).

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

²⁰ *Cabela's Inc.*

²¹ *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).

²² *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²³ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁴ *Id.* at 673, 94 N.W.2d at 50.

assessed. The assessment also applied a neighborhood adjustment of 0.76 for both 2017 and 2018; this adjustment was based on all valid sales in the area of the Subject Property during a two year period prior to the assessment date.²⁵ Two line items in the cost detail; the appliance adjustment and the plumbing adjustment, were based on the quality, style, age, and size of the property and were determined by the Marshall & Swift software.

The Subject Property was not reappraised for 2018, so the 2017 value was carried over even though some of the data reflected in the Property Record File changed. The Property Record File for the Subject Property incorrectly reflected 3.5 bathrooms instead of 2.5 bathrooms for tax year 2018, but this did not affect the assessed value of the Subject Property because it was not reappraised for tax year 2018. For the same reason, the physical depreciation applied to the Subject Property did not change from 2017 to 2018.

The Taxpayer offered evidence of three other properties. 7208 N. 154th St. (Comp 1) is a two-story home directly adjacent to the Subject Property, built in 2004.²⁶ Comp 1 sold on December 30, 2015, for \$275,000 and was assessed at \$288,600 for tax year 2017. 7233 N. 154th Ave. (Comp 2) is a 2,714 square foot two-story home built in 2005, with 900 square feet of finished basement. Comp 2 sold on March 1, 2016, for \$287,000 and was assessed at \$290,000 for tax year 2017. 7203 N. 153rd Cir. (Comp 3) is a two-story home built in 2002, with 1,360 feet of finished basement. Comp 3 sold on November 6, 2015, for \$307,000 and was assessed at \$356,600 for tax year 2017.

Skradis testified that the Taxpayer's comparable properties were all two-story homes, which are less expensive to build and less valuable than 1½ story homes like the Subject Property. Four 1½ story properties sold in the area of the Subject Property during the two-year study period prior to tax year 2017. All sold for more than their assessed values, and all of them had higher per square foot assessed values than the Subject Property.²⁷

The Taxpayer asserted that, according to a study issued by the Legislature, the average annual percentage increase for real property in Douglas County from 2008 to 2018 was 2.31%; the cumulative increase was 25.66%. From 2016 to 2017, the Subject Property's assessed value

²⁵ The sales are shown at Exhibit 3:12 through 3:14 (2017) and Exhibit 4:11 through 4:13 (2018).

²⁶ All information in this paragraph is taken from Exhibit 3:19 and the testimony of Lee Boehm.

²⁷ Exhibit 3:18.

increased 30%.²⁸ The assessment history of the Subject Property shows that, although its assessed value dropped as low as \$219,000 in 2012, it was assessed at \$293,300 in tax year 2008 and \$299,000 in tax year 2018, a cumulative increase of 1.9% during the period that the Legislature's study found an average cumulative increase of 25.66%.²⁹ The Taxpayer offered his opinion of value of the Subject Property at \$251,266.

VI. ANALYSIS

Comparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value.³⁰ Although the Taxpayer offered some evidence of sales of allegedly comparable properties, the Property Record Files for those properties were not admitted into evidence because they were not exchanged with the County Board by the deadline required by the Commission's Order for Hearing and Notice of Hearing. Without the information contained in the Property Record Files, the Commission cannot make a detailed comparison of the physical features, amenities, and assessment methods of the properties to determine whether they are truly comparable to the Subject Property for either valuation or equalization purposes.

Based on the evidence in the record, it appears that the Taxpayer's proposed comparable properties are similar to the Subject Property in location, function, and age, but dissimilar in that the proposed comparables are all two-story houses whereas the Subject Property is a 1½ story house. Skradis, a licensed appraiser, testified that 1½ story houses are more expensive to build and more valuable than two-story houses. On the record before the Commission, we find that the physical characteristics of the Taxpayer's proposed comparable properties are not similar enough to the Subject Property's physical characteristics for use as equalization or valuation comparables.

Skradis testified that the Subject Property was underassessed, which is consistent with the fact that the four 1½ story properties sold in the area of the Subject Property sold for more than their assessed values, and all of them had higher per square foot assessed values than the Subject Property. However, this evidence is insufficient to overcome the presumption in favor of the

²⁸ Exhibit 3:11.

²⁹ Exhibits 3:11, 3:17.

³⁰ Neb. Rev. Stat. § 77-1371 (Reissue 2018).

County Board's determination and the County Board did not give notice of an intent to prove a higher taxable value.³¹

Based upon the evidence in the record, the determinations of the County Board should be affirmed.

VII. CONCLUSION

The Commission finds that there is no 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 no clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For all 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 both tax years 2017 and 2018 are affirmed.
2. The taxable value of the Subject Property for tax years 2017 and 2018 is **\$299,000**.
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.

³¹ See 442 Neb. Admin. Code, Ch. 5 § 016.02A (2011).

7. This Decision and Order is effective for purposes of appeal on May 12, 2021.³²

Signed and Sealed: May 12, 2021

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

³² 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.