

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Scott J. Fagot et al. Trust,
Scott J. Fagot, Trustee,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0497

Decision and Order Affirming the
Determination of the Douglas
County Board of Equalization

Background

1. The Subject Property is a residential parcel improved with a 2,279 square foot one story townhouse, with a legal description of: West Shores Lot 250 Block 0 Irreg, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$653,300 for tax year 2017.
3. Scott J. Fagot et al. Trust, Scott J. Fagot, Trustee (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$492,200 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$626,700 for tax year 2017.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on August 21, 2019, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska before Commissioner Steven Keetle.
7. Scott J. Fagot was present at the hearing for the Taxpayer.
8. Larry Thomsen, Senior Appraiser: Residential, of the Douglas County Assessor/Register of Deeds Office (the County Appraiser) was present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission's review of the determination of the County Board of Equalization is de novo.²

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

² See, Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *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).

11. When considering an appeal 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
12. 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.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

1. The Taxpayer alleged that the assessed value of the Subject Property is not equalized with other comparable properties because the ratio of the assessed value to the sales price of the Subject Property is higher than the ratio of the assessed value to the sales price of other properties in the West Shores neighborhood.
2. The Taxpayer requested an assessed value of 82% of the purchase price of the Subject Property or, in the alternative, 90% of the purchase price of the Subject Property.
3. The Taxpayer purchased the Subject Property in March 2015 for \$615,000, and the Subject Property is assessed at \$626,700 or 102% of the sale price.
4. The Taxpayer presented information from the County Assessor’s web site for three recently sold properties and partial information from the County Assessor’s web site for an additional five recently sold properties located near the Subject Property in the West Shores neighborhood. The Taxpayer’s sales have a range of ratios of the assessed value to the sales price (assessed to sale ratio) from 67% to 90%, with an average ratio of 82%.

³ *Brenner* at 283, 811.

⁴ *Id.*

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

⁶ *Omaha Country Club v. Douglas Cty. 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 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).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

5. The County Board presented the PRF for the Subject Property as well as information regarding all of the qualified sales that occurred in the economic area of the Subject Property, which were used in determining the value attributed to each of the characteristics of residential properties in that area, including the Subject Property. The County Board's sales in the West Shores neighborhood have a range of assessed to sale ratios from 67% to 105% with an average ratio of 92%.⁹
6. The Subject Property is a townhouse style property. The County Assessor stated that the townhouse style properties in the West Shores neighborhood are generally newer than the properties located on the lake and the Subject Property was one of the first townhouse style properties sold.
7. The sale of the Subject Property and six of the Taxpayer's eight sales were included in the County Board's listing of the qualified sales in the West Shores neighborhood during the applicable time period. The sale of the Subject Property is the second oldest sale of all of the qualified sales, and the purchase price is the lowest of all of the properties with the same quality and condition by \$85,000.
8. The sales in the West Shores neighborhood also indicate that the market in the neighborhood is generally increasing, with one property presented by the Taxpayer selling in March 2015 for \$750,000 and then selling again in November 2016 for \$850,000.
9. 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."¹⁰ "There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity."¹¹
10. 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.¹² Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹³
11. "It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine

⁹ This level of value for the Subject Property's neighborhood is within the range allowed for a class or subclass of property by Neb. Rev. Stat. § 77-5023 (Reissue 2018).

¹⁰ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹¹ *Id.* at 673, 94 N.W.2d at 50.

¹² *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹³ *Cabela's, Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999) (citing *Scribante v. Douglas Cty. Bd. of Equal.*, 8 Neb.App. 25, 588 N.W.2d 190 (1999)).

actual value. Sale price is not synonymous with actual value or fair market value.”¹⁴
“Pursuant to § 77-112, the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.”¹⁵

12. The information provided to the Commission of the thirteen sales of properties in the West Shores neighborhood with the same quality and condition rating as the Subject Property that it has the fourth lowest per square foot value. Of the two townhouse style properties in these thirteen sales the Subject Property has the lowest per square foot value.
13. The Taxpayer did not provide the PRFs for the sold properties he alleged were comparable to the Subject Property. Without the details contained in the PRFs, the Commission is unable to determine the contributions to value of the various amenities or features of the sold properties such as size, style, quality, condition, garages, decks, improved basement square footage, etc., to determine how the assessed values of the other sold properties are calculated and whether they are comparable to the Subject Property, or whether adjustments could make them comparable to the Subject Property.¹⁶
14. The Taxpayer has demonstrated that the Subject Property has one of the highest assessed to sale ratios for recently sold properties in the West Shores neighborhood, but it is well within the range for all other indicators of value presented to the Commission in the present appeal.
15. The Taxpayer has not demonstrated that the assessed value of the Subject Property, particularly after adjustment by the County Board, is grossly excessive when compared to the assessed value of other comparable properties.¹⁷
16. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
17. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

¹⁴ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637 (1998).

¹⁵ *Cabela's, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

¹⁶ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on July 2, 2019, includes the following:

NOTE: *Copies of the County's Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County's web page is not a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

¹⁷ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

ORDER

IT IS ORDERED THAT:

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

Land	\$ 79,100
<u>Improvements</u>	<u>\$547,600</u>
Total	\$626,700

3. This Decision and Order, if no further action is taken, 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 year 2017.
7. This Decision and Order is effective on August 21, 2020.

Signed and Sealed: August 21, 2020

Steven A. Keetle, Commissioner