

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Richard B. McCaulley et al.,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0627

Decision and Order Reversing the Decision
of the
Douglas County Board of Equalization

For the Appellant:

Richard B. McCaulley,
Pro Se

For the Appellee:

Jennifer D. Chrystal-Clark
Deputy Douglas County Attorney

This appeal was heard before Commissioners Robert W. Hotz and James D. Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is a 10.14 acre rural residential parcel located in Douglas County. The parcel is improved with a 7,414 square foot home. The legal description and property record card for the Subject Property can be found at Exhibit 2.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the Subject Property was \$1,268,060 for tax year 2017.¹ Richard B. McCaulley (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$930,266.² The Douglas County Board determined that the taxable value of the Subject Property for tax year 2017 was \$1,268,060.³

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on October 8, 2019. Prior to the hearing, the parties exchanged exhibits as ordered by the Commission. The parties stipulated to the receipt of Exhibits 1 through 13; Exhibit 14 was offered in the course of the hearing and admitted without objection.

¹ Exhibit 1.

² Exhibit 2:23.

³ Exhibit 1.

III. STANDARD OF REVIEW

The Commission's review of the determination by a county board of equalization is de novo.⁴ 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.⁵

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.⁶

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.⁷ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁹ 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.¹⁰

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.¹¹ The commission may also take notice of judicially cognizable facts, may take

⁴ 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).

⁵ *Brenner* at 283, 811.

⁶ *Id.*

⁷ Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

⁸ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁹ 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).

¹⁰ *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹¹ Neb. Rev. Stat. §77-5016(8) (Reissue 2018).

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.¹² The Commission's Decision and Order shall include findings of fact and conclusions of law.¹³

IV. VALUATION & 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.¹⁴

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.¹⁵ Actual value, market value, and fair market value mean exactly the same thing.¹⁶ 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.¹⁷ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁸ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁹

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.²⁰ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²¹ If taxable values are

¹² Neb. Rev. Stat. §77-5016(6) (Reissue 2018).

¹³ Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

¹⁴ Neb. Rev. Stat. §77-112 (Reissue 2018).

¹⁵ *Id.*

¹⁶ *Omaha Country Club* at 180, 829.

¹⁷ Neb. Rev. Stat. §77-131 (Reissue 2018).

¹⁸ See Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

¹⁹ Neb. Rev. Stat. §77-201(1) (Reissue 2018).

²⁰ *Neb. Const.*, Art. VIII, §1.

²¹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

to be equalized, it is necessary for a taxpayer to establish by clear and convincing evidence that the valuation placed on the 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.²² There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²³

B. Summary of the Evidence

Nebraska law provides for actual value to be determined using professionally accepted mass appraisal methods; one accepted method enumerated by the statute is the cost approach. Although the Taxpayer did not elicit testimony from the County Assessor or her employees, the exhibits suggest that the Subject Property and all of the Taxpayer's proposed comparable properties were assessed using the cost approach.

In the cost approach, the value of a property is derived by adding the estimated value of the land to the current cost of constructing a replacement for the improvements and then subtracting the amount of depreciation (i.e., for deterioration and obsolescence) in the structures from all causes. This approach is particularly useful in valuing new or nearly new improvements and properties that are not frequently exchanged in the market. The current costs to construct the improvements can be obtained from cost estimators, cost manuals, builders, and contractors. Depreciation is measured through market research and the application of specific procedures. Land value is estimated separately in the cost approach.²⁴

The quality of construction of a residence will influence its cost.²⁵ Determining a quality rating involves evaluation of materials, workmanship, design, size and number of appointments, and other factors.²⁶ Quality is rated on a six-level scale, from low to excellent.²⁷ The quality and condition of building components greatly influence the cost estimate, the depreciation estimate, and the property's comparability with other properties.²⁸

²² *Newman v. Cty. of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²³ *Id.* at 673, 94 N.W.2d at 50.

²⁴ The Appraisal Institute, *The Appraisal of Real Estate* 47 (14th ed. 2014).

²⁵ Marshall & Swift, *Residential Costing Handbook*, 6, December 2018.

²⁶ *Id.*

²⁷ *Id.* at Low 1 through Excellent 18.

²⁸ The Appraisal Institute, *The Appraisal of Real Estate* 271 (14th ed. 2014). *For example*, under the Marshall & Swift residential costing guidelines effective on January 1, 2017, the base cost of a 4,000 square foot good quality residence, stud framed with wood siding, but taking no other factors into account, was \$86.55 per square foot. The base cost of a 4,000 square foot very good quality residence, common brick masonry, but taking no other factors into account, was \$118.24 per square foot, a difference of \$31.69 per square foot. See *Residential Costing Handbook*, Good-17, VG-13, December 2015.

1. Improvements

The improvement on the Subject Property is a two story, 7,414 square foot residence, built in 2007; it has seven and one-half baths and five bedrooms.²⁹ The construction type is masonry common brick.³⁰ For tax year 2017, the County Assessor rated the quality of the Subject Property as very good and the condition as average.³¹ Using the cost approach, the County Assessor calculated a base cost per square foot of \$133.63, an HVAC adjustment of \$12,307, and add-ons of \$287,248; depreciation of 5% and a neighborhood adjustment of 0.9508 were applied, resulting in a replacement cost new less depreciation (RCNLD) of \$1,165,492 and a total improvement value of \$1,165,500 (i.e., the RCNLD rounded to the nearest hundred dollars).³² Following the Taxpayer's protest, the County Board valued the land component of the Subject Property at \$102,560 and the improvement component at \$1,165,500.³³

The Taxpayer provided the property record files (PRFs) of eight properties he believed to be comparable to the Subject Property. The Subject Property, at 7,414 square feet, is more than twice the size of the residences on four of the Taxpayer's proposed comparable properties; it is between 1,981 and 2,952 square feet larger than three of the others.³⁴ These seven houses are too much smaller than the house on the Subject Property for the properties to be comparable for these purposes.

The remaining property, 8585 N 96th Street (the "Neighboring Property"), is located adjacent to the Subject Property to the south. This is a 15.2 acre parcel improved with a 6,798 square foot residence, built in 2001; it has five baths and four bedrooms, as well as an in-ground swimming pool, a bath house, and a pole barn.³⁵ The construction type was frame siding.³⁶ For tax year 2017, the County Assessor rated the quality of the Neighboring Property as good and the

²⁹ Exhibit 8:7-8.

³⁰ Exhibit 8:8.

³¹ Exhibit 8:8.

³² Exhibit 8:11-12. Exhibit 2, the PRF for the Subject Property offered by the County Board, indicates a base per square foot price of \$129.60. If the HVAC allowance listed on Exhibit 8:12 is combined with the rough in adjustment listed on Exhibit 2:10, the total is subtracted from the plumbing adjustment listed on Exhibit 2:10, and that difference is divided by the square footage of the house, the result is \$4.03, which accounts for the difference in the base per square foot price. It is somewhat concerning that the version of the PRF offered by the County Board differs from the version provided to the Taxpayer by the county for the same proceeding.

³³ Exhibit 1.

³⁴ None of these totals include finished basement.

³⁵ Exhibit 10:13-14. We note that the PRF lists the size of the Neighboring Property at 7,050 square feet, and the quality/condition rating as very good/good, for the 2016 assessment; these values are both lower in the 2017 assessment. The record contains no explanation for these changes.

³⁶ Exhibit 10:14.

condition as average.³⁷ Using the cost approach, the County Assessor calculated a base cost per square foot of \$96.54, an HVAC adjustment of \$10,605, and add-ons of \$265,584; depreciation of 18% and a neighborhood adjustment of 0.9508 were applied, resulting in a total improvement value (including \$92,796 RCNLD for outbuildings) of \$844,800 (rounded)³⁸. The land component of the Neighboring Property was valued at \$404,800 and the improvement component was valued at \$844,800.³⁹

As compared with the Subject Property, the Neighboring Property is smaller and older, and its overall quality rating is lower. It was constructed using less expensive methods and materials (e.g., frame siding as opposed to brick masonry), and it has fewer bathrooms and related plumbing fixtures. These differences prevent the properties from being comparable for equalization purposes. They also combine to create substantial differences between the values of the houses when determined using the cost approach. The technique used to determine the valuation of the properties is not clearly inconsistent with accepted mass appraisal methods.

The Taxpayer expressed concern about the size of the valuation increase for the Subject Property from 2016 to 2017. For tax year 2016, the land component of the property was valued at \$52,560 and the improvement component was valued at \$877,700.⁴⁰ For tax year 2017, these amounts increased by 95 percent and 32.7 percent, respectively. However, the increase in the improvement value followed a period from 2011 through 2016 in which the improvement value remained steady at \$877,700, following a confession of judgment approved by this Commission.⁴¹ We infer that the increase from tax year 2016 to tax year 2017 did not result exclusively from improvements to the property, but instead from a combination of an improving market and the mandatory six-year review and inspection cycle.⁴² The reason for the dramatic increase in the land value, which had fluctuated prior to 2017, was not explained on the record. As discussed below, however, the County Board stipulated to a reduction in the land component of the value.

³⁷ Exhibit 10:14.

³⁸ Exhibit 10:22, Exhibit 10:24-26. Based on the data included in the County Board's exhibits, the RCNLD of the Neighboring Property should have totaled \$728,242, but the exhibit shows the RCNLD as \$752,012 at Exhibit 10:23. As noted elsewhere in this Order, however, neither party called any witnesses to explain the methodology employed by the County Assessor, so we are unable to determine the reason for this discrepancy.

³⁹ Exhibit 10:27. It appears from the exhibits that the Neighboring Property's land is being valued as residential land, where the majority of the Subject Property's land is being valued as agricultural land.

⁴⁰ Exhibit 8:13.

⁴¹ Id.

⁴² See Neb. Rev. Stat. § 77-1311.03 (Reissue 2018).

The Taxpayer has not presented competent evidence to demonstrate that the determination of the county board as to the value of the improvements on the Subject Property was incorrect. Nor has the Taxpayer proven that the valuation placed on the 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, as required for a reduction in the valuation under equalization principles.

2. Land

The County Board did not present a case-in-chief, and the Taxpayer did not produce clear and convincing evidence that the valuation of the land component of the Subject Property was arbitrary or unreasonable during his own case-in-chief. However, the County Board proposed on the record to stipulate to a land value of \$53,590 for tax year 2017; the Taxpayer agreed to that stipulation on the record. Parties to any proceeding before the Commission may agree upon any fact or issue involved in the controversy, either by written stipulation entered into the record as an exhibit, or by oral agreement stated on the record.⁴³ We accept the stipulation of the parties as to the value of the land.

V. CONCLUSION

Based upon the parties' stipulation that the value of the land component of the Subject Property should be reduced, 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 determination. The Commission also finds that the stipulated land value constitutes clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.⁴⁴

For all of the reasons set forth above, the decision of the County Board is vacated and reversed.

⁴³ 442 Neb. Admin. Code Ch. 5 § 005 (June 2011). The Commission is not bound by such a stipulation.

⁴⁴ 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.

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

Land	\$ 53,590
<u>Improvements</u>	<u>\$1,165,500</u>
Total	\$1,219,090

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 year 2017.
7. This Decision and Order is effective for purposes of appeal on October 21, 2019.⁴⁵

Signed and Sealed: October 21, 2019

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

⁴⁵ 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.