

# BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

James D. Hicks,  
Appellant,

v.

Frontier County Board of Equalization,  
Appellee.

Case No: 17R 0068

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

**For the Appellant:**

James D. Hicks,  
Pro Se

**For the Appellee:**

Colten C. Venteicher,  
Bacon & Vinton, LLC

This appeal was heard before Commissioners Steven Keetle and James Kuhn.

## I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in Frontier County. The parcel is improved with a 2,245 square foot home and detached garage. The legal description of the parcel is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 9.

## II. PROCEDURAL HISTORY

The Frontier County Assessor determined that the assessed value of the Subject Property was \$258,859 for tax year 2017. James D. Hicks (the Taxpayer) protested this assessment to the Frontier County Board of Equalization (the County Board) and requested an assessed valuation of \$221,479. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$248,995.<sup>1</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of exchanged exhibits 1-13, 22, and 25-

---

<sup>1</sup> Exhibit 1.

33. The Commission also received exhibits 14-21, 23-24 and 34-35 at the hearing. The Commission held a hearing on July 6, 2018.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.<sup>2</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>3</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>4</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 arbitrary.<sup>5</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>7</sup> 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.<sup>8</sup>

---

<sup>2</sup> See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

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

<sup>7</sup> 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).

<sup>8</sup> *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

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>9</sup> 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.”<sup>10</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>11</sup>

## **IV. LAW**

### **A. Valuation**

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>12</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 77-1371, (2) income approach, and (3) cost approach.”<sup>13</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>14</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>15</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>16</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>17</sup>

---

<sup>9</sup> Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

<sup>10</sup> Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

<sup>11</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

<sup>12</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>13</sup> *Id.*

<sup>14</sup> *Omaha Country Club* at 180, 829.

<sup>15</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>16</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>17</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

## B. Equalization

“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.”<sup>18</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>19</sup> 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 disproportionate part of the tax.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</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>23</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>24</sup> If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere errors of judgment.”<sup>25</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>26</sup>

## V. EVIDENCE AND ANALYSIS

The unresolved issues before the Commission in this appeal, as determined by the Parties in their pre-hearing conference, are whether the Subject Property is valued fairly and equitably when compared to the valuation of the Lenz property, and whether the County may utilize current or past listings when determining assessed values. The Taxpayer alleges that the value of

---

<sup>18</sup> *Neb. Const.*, Art. VIII, §1.

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

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

<sup>21</sup> *Cabela's Inc. v. Cheyenne Cty. Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>22</sup> *Banner Cty. v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>23</sup> *Equitable Life v. Lincoln Cty. Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

<sup>24</sup> *First Nat. Bank & Trust Co. v. Cty. of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>25</sup> *Newman v. Cty. of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>26</sup> *Id.* at 673, 94 N.W.2d at 50.

the dwelling on the Subject Property should be set at the same per square foot value as indicated by the current sale listing for the Lenz property. The County Board action corrected the square footage of the improvements on the Subject Property and lowered the quality grade which, in combination, resulted in a lower assessed value.

The Commission first considers whether the assessed valuation of the Subject Property is fair and equitable when comparable to the assessed valuation of the Lenz property. The Taxpayer offered several Property Record Files (PRF) for properties located in Chase County, that were not comparable to the subject property in terms of size, style of construction, use, quality, condition, or location.<sup>27</sup> Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>28</sup> The PRF for the Lenz property and the PRF for the Subject Property demonstrate that these properties are comparable properties.<sup>29</sup> The Parties agree that the Subject Property and the Lenz property were built by the same builders and are of similar workmanship, construction type, and quality (grade).<sup>30</sup> There are, however, differences between the Subject Property and the Lenz property which impact their assessments. For example, the Lenz property is larger, has a larger attached garage, and has a porch and deck the Subject Property lacks, but the differences between the properties are accounted for on the PRF for each property.<sup>31</sup> Additionally, the assessed value as determined by the County Board is based on a lowering of the grade rating by the County Board. The Assessor testified that this lowering should be assigned to the Lenz property for tax year 2017 as well, but because the owners didn't protest, their assessment couldn't be changed. Due to these differences in the improvements, the Lenz property has a per square foot assessment of \$107.28, which is higher than the per square foot value of \$96.62 for the Subject Property.<sup>32</sup> The argument that the Subject Property is not valued fairly and equitably when compared to the Lenz property has no merit when looking at the assessed values.

The next issue before the Commission is the use of the sale listing of the Lenz property when establishing assessed values. At the hearing before the Commission, the Taxpayer requested an assessed value for the residence on the Subject Property of \$87.50 per square foot based on the

---

<sup>27</sup> E14-E21, E26-32.

<sup>28</sup> See generally, International Association of Assessing Officers, Property Assessment Valuation, at 169-79 (3rd ed. 2010).

<sup>29</sup> E9, E10:1-2

<sup>30</sup> Pre-Hearing Conference Report

<sup>31</sup> See, E9 & E10.

<sup>32</sup> Excluding land and outbuildings: Subject Property \$96.62 per sq. ft. (\$216,902 ÷ 2,245 sq. ft.) Lenz \$107.28 per sq. ft. (\$270,340 ÷ 2,520 sq ft.)

current listing of the Lenz property.<sup>33</sup> The Assessor testified that she determined the assessed value of the Subject Property and the Lenz property using a new Computer Assisted Mass Appraisal (CAMA) system for tax year 2017. This CAMA system utilized sales in Frontier County, along with current costing data, to determine an assessed value. The Assessor testified that she did not use sales listings of properties in Frontier County when determining assessed values because until a property actually sold they could not be confirmed and may not reflect the actual market in the county.

Listings may be used by appraisers for the development of an estimate of value.<sup>34</sup> A listing alone is not, however, evidence of actual value. The concept of actual value assumes both a willing seller and a willing buyer. A listing is the amount a willing seller indicates would be an acceptable price for sale, but value is the price actually obtainable for property offered for sale in a market.<sup>35</sup> A listing combined with an offer to purchase may be some evidence of value.<sup>36</sup> In this appeal, there is no evidence of offers made. The testimony of the Assessor regarding the listing history of the Lenz property is an example of why a single listing alone is not evidence of value. The Assessor testified that in June of 2017, the Lenz property was listed, along with an adjacent parcel, for sale for \$350,000 and was not lowered until after the first of the year (January 1, 2018). This would mean that using the listing of the Lenz property at the time of the valuation protest before the County Board as evidence of value would have indicated that the assessed value of the Lenz property and the Subject Property would need to be increased.<sup>37</sup> Additionally, the Lenz property has been listed for sale for at least two years and there was testimony that the seller has already purchased a different residence and wanted to get rid of the Lenz property and move out there.

The Taxpayer offered no additional evidence of market values or value for the Subject Property. For reasons stated, the evidence is insufficient to demonstrate that determination of the County Board was incorrect, arbitrary, or unreasonable.

---

<sup>33</sup> When the assessed value of the land component of \$9,313 is removed from the current listing price of the Lenz property of \$230,000 the difference is \$220,687; divided by the total living area of 2,520, the per square foot value is \$87.57, which is close to the Taxpayer's request of \$87.50 per square foot.

<sup>34</sup> See generally, *The Appraisal of Real Estate*, 13 Edition, Appraisal Institute, 2008, 162-165.

<sup>35</sup> *Reed v. Reed*, 277 Neb. 391, 763 N.W. 2d 686; *State v. Garza*, 241 Neb. 256, 487 N.W.2d 551 (1992).

<sup>36</sup> See *McNeal v. Tuori*, 107 Mich.App. 191 309 N.W.2d 588 (1981).

<sup>37</sup> When the assessed value of the land component of \$9,313 of the Lenz property as well as the value of the second parcel of \$46,663 is removed from the listing price of the Lenz property of \$350,000 the difference is \$294,024; divided by the total living area of 2,520, the per square foot value is \$116.68, which is higher than the Subject Property's assessed improvement value of \$96.62 per square foot.

## VI. 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 determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the appeal of the Taxpayer is denied.

## VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Frontier County Board of Equalization determining the taxable value of the Subject Property for tax year 2017 is affirmed.<sup>38</sup>
2. The taxable value of the Subject Property for tax year 2017 is:

Land:	\$ 12,973
<u>Improvements:</u>	<u>\$236,022</u>
Total	\$248,995
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Frontier County Treasurer and the Frontier County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
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 December 11, 2018.<sup>39</sup>

---

<sup>38</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.

<sup>39</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.

Signed and Sealed: December 11, 2018

---

Steven A. Keetle, Commissioner

SEAL

---

James D. Kuhn, Commissioner