

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bert W. Mehrer,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0294

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

For the Appellant:
Bert W. Mehrer,
Pro Se

For the Appellee:
Jennifer D. Chrystal-Clark,
Deputy Douglas County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in Douglas County. The parcel is improved with a 7,486 square foot one and one-half story home. The legal description of the parcel and Property Record File (PRF) are found at Exhibit 2.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the Subject Property was \$1,659,400 for tax year 2017. Bert W. Mehrer (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$1,266,200. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$1,659,400.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on June 7, 2019. The parties stipulated to the receipt of exchanged exhibits 1 and 2, and the receipt of exhibits 3-5 was denied for the reasons stated on the record.

¹ Ex 1.

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, 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

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order 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

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.*

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).

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 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

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).

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).

B. Summary of the Evidence

The Taxpayer purchased the Subject Property in early 2007 after a long and complex negotiation, at least part of which was conducted with an interpreter. The Taxpayer testified that the \$1,420,000 purchase price for the Subject Property included personal property. The record considered by the Commission does not contain evidence regarding the items alleged to be personal property that were included in the purchase. The Taxpayer discussed the protest and appeal process he had engaged in for prior tax years, including an order of the Commission determining the assessed value of the Subject Property based on a confession of judgment (i.e., a settlement) accepted by the County Board and the Taxpayer for tax year 2015. The assessed value of the Subject Property remained the same for tax year 2016 but increased for tax year 2017.

The Taxpayer asserted that the increase in value from the prior assessment year was arbitrary. The Taxpayer further asserted that the actual value of the Subject Property should remain at the same level as determined in the Commission's decision determining the actual value of the Subject Property for the 2015 tax year and carried forward for the 2016 assessment. The assessed value for real property may be different from year to year, dependent upon the circumstances.¹⁸ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁹ Orders determining the value of real property for a specific tax year are not relevant to the actual value of the real property in a subsequent year.²⁰ The Commission's determination for a prior year is neither controlling nor competent evidence of the actual value of the Subject Property for a subsequent year.²¹ The Taxpayer presented no evidence to relate the 2015 value as determined in the confession of judgment to the 2017 assessment year.

The Taxpayer alleged that the determination of the County Board for tax year 2017 was unreasonable or arbitrary. The Taxpayer testified that there are at least 40 properties in the Omaha regional market with asking prices over a million dollars and that many of them had been

¹⁸ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁹ See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

²⁰ See, *Affiliated Foods Cooperative, Inc., v. County of Madison*, 229 Neb. 605, 428 N.W.2d 201 (1988); *Omaha Paxton Hotel Co. v. Board of Equalization*, 167 Neb. 231, 92 N.W.2d 537 (1958); *Devore v. Board of Equalization*, 144 Neb. 351, 13 N.W.2d 451 (1944).

²¹ See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

taken off of the market because there are no buyers for this type of property. The Taxpayer did not present any information about the location, assessed values, time listed for sale or time taken off of the market to support his allegations. The Taxpayer did not present any other information to allow the Commission to determine the impact of the Taxpayer's assertions regarding the market for residential properties with asking prices over a million dollars on the value of the Subject Property.

The Taxpayer alleges that the value of the property has not increased since he purchased it in 2007. "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 actual value. Sale price is not synonymous with actual value or fair market value."²² The Commission finds that the sale of the Subject Property was too remote in time to be probative of the actual value of the Subject Property as of January 1, 2017, without some evidence quantifying changes in the market during this time and the impact of such changes on the actual value of the Subject Property. The remote nature of the sale sets this case apart from cases where it was determined that the sale price was the best evidence of actual value, including *In re Estate of Craven*.²³

The County submitted the PRF for the Subject Property along with spreadsheets of sales of similar properties and sales in the Subject Property's economic area. The County acknowledges the unique nature of the Subject Property and that is reflected in the sales spreadsheets presented. The Commission finds that there is no evidence that the County Assessor did not value the property using professionally accepted mass appraisal techniques, or that the County Assessor ignored the impact of economic trends on the actual value of the Subject Property.

The County Board argued that the listing price for the Subject Property in 2019 demonstrated that the value as determined by the County Board was correct. No evidence regarding the listing of the Subject Property for sale is contained in the record before the Commission, and even if

²² *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

²³ See, *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, 281 Neb. 122, 794 N.W.2d 406 (Neb. 2011).

there was evidence of the listing of the Subject Property for sale in 2019, it would be of little if any probative value for determining the taxable value of the Subject Property for tax year 2017.

V. 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.

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 affirmed.²⁴
2. The taxable value of the Subject Property for tax year 2017 is:

Land:	\$ 75,600
<u>Improvements:</u>	<u>\$1,583,800</u>
Total:	\$1,659,400

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.

²⁴ 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.

7. This Decision and Order is effective for purposes of appeal on June 12, 2020.²⁵

Signed and Sealed: June 12, 2020

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner

²⁵ 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.