

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

James A. Hopkins,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 18R 0363

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

For the Appellant:
James A. Hopkins,
Pro Se

For the Appellee:
Joshua Woolf,
Deputy Douglas County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property is an unimproved residential parcel located in Douglas County. The legal description and property record card for the Subject Property are found at Exhibit 2.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the Subject Property was \$68,500 for tax year 2018. James A. Hopkins (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$31,000. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$68,500.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a single commissioner hearing on January 14, 2020. A Decision and Order Reversing the County Board Decision was issued on January 24, 2020. The County Board requested a rehearing on January 31, 2020.² The Commission issued an Order for Re-Hearing and Notice of Hearing which vacated the January 24, 2020, single

¹ Ex 1.

² See, Neb. Rev. Stat §77-5005(4) (Reissue 2018)

commissioner order and set this matter for a hearing before a panel of Commissioners on May 19, 2021. Prior to the hearing, the parties exchanged exhibits and at the hearing the parties stipulated to the receipt of exchanged exhibits 1 through 21.

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 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 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

³ 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 (Citations omitted).

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).

⁹ *Bottorf v. Clay County 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.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. 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.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 Neb. Rev. Stat. § 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 taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁸

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 (2002).

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

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

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

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 the Nebraska Constitution.¹⁹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁰ 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.²¹ 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.²² 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.²³ 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.²⁴ The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁵ 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 error of judgment.²⁶ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁷

V. FACTS AND ANALYSIS

The Subject Property is a vacant residential lot located in the Riverside Hills subdivision in western Douglas County. The Taxpayer did not dispute that the assessed valuation of the Subject Property was near the market value of the parcel but rather alleged that the value of the Subject

¹⁹ *Neb. Const.*, Art. VIII, § 1.

²⁰ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²¹ *Id.*; *Cabela's Inc. v. Cheyenne County Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

²² *Cabela's Inc.* at 582, 623.

²³ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁴ *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).

²⁵ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²⁶ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁷ *Id.* at 673, 94 N.W.2d at 50.

Property was not equalized with that of a comparable property located at Lot 32 of the Riverside Hills Subdivision (Lot 32).²⁸

Stan Mlotek, of the Douglas County Assessors Office testified regarding the assessments of real property in the Subject Property's subdivision. The County Assessor's office did a revaluation of the land components of all properties in the subdivision which was implemented for tax year 2017. This revaluation involved a multiple regression analysis of recent sales and valued properties based on several factors, including lot size and access to the Elkhorn River to determine a per lot value rather than a per square foot value. Mlotek testified that the values of the land components assessed by the County Assessor's Office for tax year 2017 were all determined uniformly and proportionately using the same valuation model and were equalized prior to any County Board action. Mlotek further testified that these 2017 values were carried forward to tax year 2018 if there was no action taken by the County Board. The property record files for other properties in the Subdivision support this statement regarding the assessed values of the land component values from tax year 2017 to 2018.²⁹

The Subject Property and Lot 32 are both unimproved residential lots of similar size located in the Riverside Hills subdivision. Mlotek agreed that the Subject Property and Lot 32 are both buildable lots. Lot 32 is located on the Elkhorn River and would be considered more valuable as having river access while the Subject Property does not have Elkhorn River access. Prior to County Board action in tax year 2017 the Subject Property was valued at \$68,500³⁰ and Lot 32 was assessed at \$121,400.³¹ Mlotek testified that in his opinion these assessed values were uniform and proportionate and accounted for the difference in river access and were equalized with all of the properties located in the Riverside Hills subdivision. The valuation of Lot 32 was protested to the County Board and reduced to \$31,00 for tax year 2017. The \$31,000 assessed value was carried over to tax year 2018. Mlotek testified that this \$31,000 value for lot 32 was not equalized with the other land values in the subdivision.

“Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that

²⁸ The 2018 Property Record File (PRF) for lot 32 is found in Exhibit 20, the 2017 PRF prior to County Board action is found in Exhibit 7 page 4-10.

²⁹ See, E15-E19.

³⁰ E2:7

³¹ E7:10

no one part is compelled to pay a disproportionate share of the tax. Where it is impossible to secure both the standards of the true value of a property for taxation and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief.”³² In the present appeal the evidence demonstrates that the assessed values as determined by the County Assessor’s office for tax year 2017 were equalized and represented the actual value of the land components of both the Subject Property and Lot 32. By reducing the value of Lot 32 during the protest process the County Board reduced the value of Lot 32 to 25.5% of its actual value.³³ The Nebraska Court of Appeals has held that “By adjudicating tax protests in greatly disparate amounts—676 Dillon Drive at 75.8 percent of its market value and Zabawa's comparable property at full market value—the Board failed to fulfill its ‘plain duty’ to equalize property valuations. Zabawa rebutted the presumption that the Board's decision was correct.”³⁴ The Court in *Zabawa* went on to hold that the Taxpayer was entitled to have his property assessed at the same percentage of value as the comparable property adjusted by the county board.

Based on the action of the County Board reducing the assessed value of Lot 32, the Equalized value of the Subject Property is therefore 25.5% of its previous assessed value or \$17,468.³⁵ The Commission finds and determines that the assessed value of the Subject Property for tax year 2018 is \$17,468.

VI. CONCLUSION

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 there is clear and convincing evidence that the County Board’s decision was arbitrary or unreasonable.

³² *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).

³³ $\$31,000 \div \$121,400 = .255$ or 25.5%

³⁴ *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 (2008).

³⁵ $\$68,500 \times 25.5\% = \$17,467.50$ rounded to \$17,468.

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

VII. 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 2018 is vacated and reversed.³⁶
2. The taxable value of the Subject Property for tax year 2018 is: \$17,468.
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 2018.
7. This Decision and Order is effective for purposes of appeal on August 4, 2021.³⁷

Signed and Sealed: August 4, 2021

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner

³⁶ 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.

³⁷ 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.