

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW
COMMISSION**

DENNIS TEBBE
APPELLANT,

CASE NOS: 19R 0001 &
20R 0361

V.

ADAMS COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

DECISION AND ORDER
AFFIRMING THE DECISION
OF THE ADAMS COUNTY
BOARD OF EQUALIZATION

For the Appellant:

David Skalka,
Croker, Huck, Kasher,
DeWitt, Anderson &
Gonderinger, LLC

For the Appellee:

David Bergin,
Deputy Adams County Attorney

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn. Commissioner Hotz presided.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel improved with a 1,700 square foot ranch-style home located at 3510 Smokey Hill Road, in the city of Hastings, Adams County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property are found at Exhibit 10.

II. PROCEDURAL HISTORY

The Adams County Assessor determined the assessed value of the Subject Property was \$230,255 for tax year 2019.¹ Dennis Tebbe protested this assessment to the Adams County Board of Equalization (the County Board) and requested a taxable value of \$209,355.² The County Board determined the taxable value of the Subject Property for tax year 2019 was \$230,255.³

For tax year 2020, the Adams County Assessor determined the assessed value of the Subject Property was \$230,255.⁴ Tebbe protested this assessment to the County Board and requested a taxable value of \$210,000.⁵ The County Board determined the taxable value of the Subject Property for tax year 2020 was \$230,255.⁶

Tebbe appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission).

The Commission held a Single Commissioner hearing on May 21, 2021, and issued an Order on January 4, 2022. The County Board made a timely request for a rehearing.⁷

The Commission held a hearing on May 25, 2022. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-hearing Conference Report, as ordered by the Commission. Exhibits 1-31 were admitted into evidence at the hearing.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.⁸ When the Commission considers an appeal of a decision of a

¹ Exhibit 1:1.

² *Id.*

³ *Id.*

⁴ Exhibit 2:1.

⁵ *Id.*

⁶ *Id.*

⁷ See, Neb. Rev. Stat. § 77-5015.02(5) (Reissue 2018).

⁸ 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

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.⁹

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.¹⁰

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.¹¹ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹²

The Taxpayer must introduce competent evidence of actual value of the Subject Property to successfully claim the Subject Property is overvalued.¹³ The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer

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).

⁹ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (citations omitted).

¹⁰ *Id.*

¹¹ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

¹² *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹³ 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).

establishes that the County Board's valuation was unreasonable or arbitrary.¹⁴

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.¹⁵ The Commission may take notice of judicially cognizable facts, 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.¹⁶ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁷

IV. RELEVANT 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.¹⁸

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,

¹⁴ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

¹⁵ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹⁶ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁷ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹⁸ Neb. Rev. Stat. § 77-112 (Reissue 2018).

(2) income approach, and (3) cost approach.¹⁹ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.²⁰ 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.²¹ All real property in Nebraska subject to taxation shall be assessed as of January 1.²² All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²³

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.²⁴ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁵ 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.²⁶ 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.²⁷ 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.²⁸ 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 the property when

¹⁹ Neb. Rev. Stat. § 77-112 (Reissue 2018).

²⁰ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

²¹ Neb. Rev. Stat. § 77-131 (Reissue 2018).

²² See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

²³ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

²⁴ Neb. Const., art. VIII, § 1.

²⁵ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁶ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb. App. 582, 597 N.W.2d 623 (1999).

²⁷ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁸ *Equitable Life v. Lincoln County 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).

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.²⁹ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.³⁰

V. FINDINGS OF FACT AND ANALYSIS

A. Summary of the Evidence

The parties stipulated to the receipt of exchanged exhibits 1-31 and that the taxable value of the Subject Property should be the same for both tax years 2019 and 2020.

The primary argument brought forth by the Taxpayer was that the land component of the Subject Property was overvalued due to its presence in a flood plain.

1. Testimony of Jackie Russell

Jackie Russell testified she had been the County Assessor since 2015 and had previously been a Registered Appraiser. For the assessments of the Subject Property for tax years 2019 and 2020, she testified she utilized sales from each two-year study period and developed a mass appraisal model based upon those sales. Russell stated she utilized an allocation approach to value the land component of the Subject Property. After arraying actual sales of improved parcels, she concluded 15% of the sales prices were attributable to the land component.

Russell noted that after giving notice of valuation to the Taxpayer she became aware of a 2018 flood plain delineation which included the Subject Property and other parcels in the flood plain. In her review, she noted sales prices of these improved properties were not decreasing as a result of the flood plain delineation, but the newly-imposed flood plain restrictions were having a negative impact on the value of vacant

²⁹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

³⁰ *Id.* at 673, 94 N.W.2d at 50.

parcels in the flood plain because of costs to cure including adding seven-feet of fill dirt before construction of improvements,³¹ new restrictions relating to septic systems, leech field requirements, and related costs and run-off approvals.

In relation to the value allocated to the land component of the Subject Property, Russell testified that after a review of floodplain sales for 2019 and 2020 she still believed her assessment allocations of the land component of the Subject Property were appropriate.³²

Russell also opined the most comparable property to the Subject Property was the property shown at Exhibit 18, which sold at a 53% assessment-to-sales ratio. She stated her belief the flood plain delineation had no negative effect on the sales listed on that exhibit. On cross examination, Russell agreed that after the flood plain delineation was adopted, owners of some of the lots with improvements were required to obtain flood insurance.

2. Appraisal Report

In relation to the floodplain designation noted above, Russell also reviewed an appraisal report which had been performed by Hyde Appraisal and was offered in evidence by Tebbe.³³ The report was prepared “in accordance with Uniform Standards of Professional Appraisal Practice”³⁴ and the opinion of value was retrospective to January 1, 2019.³⁵

The appraisal report included six comparable property sales with adjustments. The report also concluded the floodplain designation decreased the value of the Subject Property by 15.8%.³⁶ The appraisal reached this conclusion based on a 2015 study done in relation to

³¹ See, Exhibit 31.

³² See, Exhibit 11:1 and Exhibit 13:1.

³³ See, Exhibit 5. The Appraiser who completed the appraisal report was not called to testify regarding the report. No hearsay objection was made, and the report was included within the exhibits which were admitted into evidence per the stipulation of the parties.

³⁴ Exhibit 5:2.

³⁵ Exhibit 5:11.

³⁶ Exhibit 6:1.

similar designations made in New York City after Hurricane Sandy.³⁷ Russell testified she had reviewed the appraisal and questioned the competency of the appraisal conclusion.

B. Analysis

The Hyde appraisal analyzed six sales of properties which were compared to the Subject Property. The Commission finds there are several concerns relating to the appraisal and its reliance to determine the taxable value of the Subject Property. Most of the concerns relate to the adjustments made to comparable property sales prices. Comparables 1 and 2 were located at a golf course, as was the Subject Property, yet the appraiser made negative adjustments of \$33,900 and \$27,500 respectively without a clear explanation for why those adjustments were made.³⁸ The Subject Property had a fireplace, yet the appraisal made no positive adjustments for the lack of a fireplace in Comparables 1, 2, and 4.

Another substantial concern with the appraisal conclusions related to flood plain adjustments that were made based upon a hurricane event in 2012 on the East Coast. Russell opined that the assessed value of the Subject Property should be based upon market activity in the same market area as the Subject Property, not on an event that occurred outside of Adams County. We agree. Therefore, we conclude the opinion of value stated in the Hyde Appraisal was not clear and convincing evidence that the determination of the County Board was arbitrary or unreasonable. While Tebbe offered some evidence to indicate the market value of the Subject Property may have been lower

³⁷ See, Exhibit 6.

³⁸ The appraisal attempted to attribute these adjustments to account for the comparable properties being in the flood plain delineation. However, since the Subject Property and Comparables 1 and 2 were all in the flood plain, it does not appear to be appropriate to make any such adjustments.

as a result of the flood plain delineation, that evidence and that value were not quantified.

VI. CONCLUSIONS OF LAW

The Commission finds there is competent evidence to rebut the presumption the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. However, the Commission also finds there is not clear and convincing evidence the County Board's decision was arbitrary or unreasonable.

For the reasons set forth above, the determination of the County Board should be affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Adams County Board of Equalization determining the taxable value of the Subject Property for tax years 2019 and 2020 are affirmed.
2. The taxable value of the Subject Property for both tax years 2019 and 2020 is:

Land	\$ 37,000
<u>Improvements</u>	<u>\$193,255</u>
Total	\$230,255

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Adams County Treasurer and the Adams 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 years 2019 and 2020.

7. This Decision and Order is effective for purposes of appeal on July 12, 2024.³⁹

Signed and Sealed: July 12, 2024

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

³⁹ 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.