

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Brenda J. Bickford,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case Nos: 19R 0238 & 20R 0489

Decision and Order Affirming the
Determinations of Value by the Lancaster
County Board of Equalization

For the Appellant:
Brenda J. Bickford,
Pro Se

For the Appellee:
Eric Synowicki,
Deputy Lancaster County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located at 1820 S.W. 26th Street in Lincoln, Lancaster County, Nebraska. The parcel is improved with an 805 square foot home built in 2004. The legal description and property record card for the Subject Property are found at Exhibits 3 and 4.

II. PROCEDURAL HISTORY

The Lancaster County Assessor (the County Assessor) determined the assessed value of the Subject Property was \$126,600 for both tax years 2019 and 2020. For each of these tax years, Brenda J. Bickford (the Taxpayer) protested the assessments to the Lancaster County Board of Equalization (the County Board) and requested an assessed valuation of \$95,000. The County Board determined the taxable value of the Subject Property for both tax years 2019 and 2020 was \$126,600.¹

Brenda J. Bickford appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a Single Commissioner hearing

¹ Exhibits 1-2.

for both appeals on March 29, 2021, with Commissioner James D. Kuhn presiding. The Commission entered an Order dated May 25, 2021, affirming both determinations of value by the County Board. On June 17, 2021, the Taxpayer requested a rehearing.² On June 22, 2021, the Commission entered an Order Vacating Single Commissioner Decision and Order for Hearing and Notice of Hearing, setting the hearing for September 29, 2021.

The Commission held a hearing on both appeals on September 29, 2021, with Commissioner Robert W. Hotz presiding. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The parties also reserved the right to object to exhibits. Exhibits 1 through 31 were received into evidence.

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

² See Neb. Rev. Stat. § 77-5015.02 (Reissue 2018).

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).

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

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 may take notice of general, technical, or scientific facts within its specialized knowledge.¹¹ Additionally, the Commission 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. APPLICABLE 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 Neb. Rev. Stat. § 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

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).

¹⁰ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

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 (2002).

subject to taxation as directed by Neb. Rev. Stat. § 77-201 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 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.²² 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.²³ 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.²⁴ 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.²⁵ The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁶ 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.²⁷ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁸

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

¹⁸ 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).

²² *Id.*; *Cabela's Inc. v. Cheyenne County Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

²³ *Cabela's Inc.* at 582, 623.

²⁴ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁵ *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).

²⁶ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²⁷ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁸ *Id.* at 673, 94 N.W.2d at 50.

V. ANALYSIS

The Taxpayer purchased the Subject Property on April 10, 2014, for \$95,000. The County Assessor did not consider that sale an arm's length transaction, noting that the sale was a "HUD foreclosure."²⁹ No persuasive evidence was received indicating that the 2014 sale of the Subject Property was an arm's length sale that could serve as evidence of the actual value of the Subject Property for tax year 2019 or 2020. The sale was more than four years prior to the January 1 effective date for tax year 2019.

For both tax years, the property was assessed at fair quality and average minus condition.³⁰ The County Assessor analyzed the value of the Subject Property in relation to at least four sales of comparable properties, including adjustments for the differences in condition, basement area and finish, garage size, and other factors.³¹

The Taxpayer provided an analysis of several properties she believed were comparable to the Subject Property, with a focus on percentage increases from one tax year to the next.³² The assessed value for real property may be different from year to year according to the circumstances.³³ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.³⁴ Similarly, prior assessments of other properties are not relevant to the subsequent assessment.³⁵ It follows that evidence of a percentage increase in assessed value from the prior year is not relevant evidence of actual value for the current year. Furthermore, the Taxpayer did not provide property record files for any of the suggested comparable properties. The Commission's Order for Hearing required each party to provide copies of the Property Record File for any parcel a party will assert is a comparable parcel.³⁶ Without the Property Record File of a suggested comparable property, the Commission is unable to conduct an appropriate equalization comparison and analysis.

²⁹ Exhibit 3:3-4.

³⁰ Exhibits 3:5, 4:2.

³¹ Exhibit 3:7.

³² Exhibit 3:15-22.

³³ *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 614, 428 N.W.2d 201, 206 (1988); see Neb. Rev. Stat. § 77-1502 (Reissue 2018).

³⁴ *Affiliated Foods Coop.*, 229 Neb. at 613, 428 N.W.2d at 206; *DeVore v. Board of Equal.*, 144 Neb. 351, 354-55, 13 N.W.2d 451, 452-53 (1944).

³⁵ *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

³⁶ *Order Vacating Single Commissioner Decision and Order for Hearing and Notice of Hearing*, paragraph 12. Case File.

VI. CONCLUSION

The Commission finds there is no competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds there is no clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

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

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Lancaster 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 tax year 2019 is \$126,600.
3. The taxable value of the Subject Property for tax year 2020 is \$126,600.
4. This Decision and Order, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2019 and 2020.
8. This Decision and Order is effective for purposes of appeal on March 25, 2022.³⁷

Signed and Sealed: March 25, 2022

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

³⁷ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of the Nebraska Statutes and Court Rules.