

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

Thomas L. Hilt Revocable
Trust, Thomas L. Hilt,
Appellant,

v.

Douglas County Board of
Equalization,
Appellee.

Case No: 20R 0140

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

For the Appellant:

Thomas L. Hilt, Trustee
Pro Se

For the Appellee:

Jennifer D. Chrystal-Clark,
Deputy Douglas County
Attorney

This appeal was heard before Commissioners Steven Keetle and Robert Hotz.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in Douglas County. The parcel is improved with a 7,868 square foot ranch style home. The legal description and property record file 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 \$1,425,000¹ for tax year 2020. Thomas L. Hilt Revocable Trust (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and

¹ Ex. 1.

requested an assessed valuation of \$997,500.² The County Board determined that the taxable value of the Subject Property for tax year 2020 was \$1,225,000.³

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on March 25, 2021, with Commissioner Keetle presiding. Prior to the hearing, the parties exchanged exhibits. At the hearing the parties stipulated to the receipt of Exhibit 1. Exhibit 2, Exhibit 3 pages 1-4, 6-14,17-51, part of page 52, 53-58, and 61-88, and Exhibit 4 pages 1-5 were received.

III. STANDARD OF REVIEW

The Commission's review of the determination by a county board of equalization is de novo.⁴ 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.⁵

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.⁶

² Ex. 3:1.

³ Ex 1.

⁴ 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).

⁵ *Brenner* at 283, 811 (Citations omitted).

⁶ *Id.*

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.⁷ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁹ 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.¹⁰

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.¹¹ 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.¹² The Commission's Decision and Order shall include findings of fact and conclusions of law.¹³

IV. VALUATION

A. Law

⁷ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁸ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁹ 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).

¹⁰ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹¹ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

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 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

B. Facts & Analysis

Scott Barnes, an Appraiser with the Douglas County Assessor/Register of Deeds, testified that he was in support of the County Board's determination of value for tax year 2020. Barnes testified regarding the assessment processes of the Douglas County Assessor's office generally and the Subject Property specifically. Barnes has been with the Douglas County Assessor's office for nine years, the past six years of which he had been an appraiser primarily

¹⁴ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁵ *Id.*

¹⁶ *Omaha Country Club* at 180, 829 (2002).

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).

appraising residential properties. Barnes is not a certified real property appraiser. Barnes testified he had not been inside of the Subject Property and that requests by the County Assessor's office for an internal inspection had been denied by the Taxpayer.²⁰ Barnes testified that the Douglas County Assessor's office determined the characteristics of the Subject Property from an external inspection. Utilizing those characteristics and a Computer Assisted Mass Appraisal (CAMA) system that incorporated the current Marshall & Swift Valuation Service data, the County Assessor's Office determined the replacement cost new of the Subject Property. The County Assessor's Office then used depreciation data derived from the market to determine the replacement cost new less depreciation (RCNLD) for the Subject Property as shown on the Property Record File (PRF).²¹ No information was presented to demonstrate how the County Board arrived at its determination of value of \$1,225,000.

In response to questions from the Taxpayer and Commission Barnes stated that the size of the garage basement should have been changed and the large residence multiplier applied, as stated in the account notes, for tax year 2020.²² Additionally, the physical depreciation for the Subject Property based on its age and style of construction should be 7% rather than the 3% applied by the County Assessor's valuation model.²³ Lastly Barnes testified that a property within the same market area that had the same quality rating as the Subject Property was receiving a .98 quality adjustment while the Subject Property was receiving a 1.00 quality adjustment.²⁴

Thomas L. Hilt, trustee of the Thomas L. Hilt Revocable Trust, testified on behalf of the Taxpayer. Hilt stated that he has over 70 years of involvement in his family construction and property development business, primarily in the area of cost accounting. Hilt is not a certified real property appraiser.

²⁰ See, E2:5

²¹ E2:2-11

²² See E2:5

²³ Marshal and Swift Residential Cost Handbook (6/2018) pg. E-17.

²⁴ E3:87

Hilt alleged that he had owned large residential properties in Douglas County and that when he sold them they did not sell for their replacement cost, but he offered no information regarding the assessments, sales, or terms of sales to support his position. Hilt testified that he designed and built the Subject Property in 2009 for a cost of \$1,057,000. Hilt did not break down the costs he incurred during the construction of the Subject Property and the Commission is unable to determine if these costs were typical for the market. The Commission cannot determine if the value of work performed by Hilt in the design and construction of the Subject Property was included in these costs. The sales history of the Subject Property shows that the Taxpayer purchased the Subject Property in November of 2009 for \$1,057,103 from Jennifer R. Wilkins.²⁵

The Taxpayer alleged the materials used in the Subject Property were not those that would be in a property with a very good quality rating. Hilt discussed the plumbing to support this position and provided excerpts from a National Building Cost Manual and other sources, as well as his determination of the quality of components that were utilized in the construction of the Subject Property.²⁶ The Taxpayer also alleged that the condition of the Subject Property should be reduced lowering the value as determined by the County Assessor's Office. Mr. Hilt provided testimony and photographs of portions of the interior and exterior of the Subject Property.²⁷

Quality and condition ratings are subjective determinations made by professionals in the fields of assessment or appraisal of real property. Hilt's testimony regarding quality and condition picks and chooses from various sources as the basis for his opinions and is not supported by the evidence before the Commission. The Commission finds that the Taxpayer has failed to prove by clear and convincing evidence that the County Assessor's determinations of quality and condition were unreasonable, arbitrary, or incorrect.

²⁵ E2:3.

²⁶ E3:13-14

²⁷ E3:52-58 (as received)

The Taxpayer offered a “Standard Report” showing a value for the Subject Property.²⁸ Hilt testified that he is certified in the use of the Marshall and Swift software and has been using it for over 22 years. Hilt is not a licensed real estate appraiser and provided no information regarding the training or certification he previously received. Barnes testified that he was unaware of any certification available for Marshall and Swift software. Hilt’s testimony regarding the reports and the exhibits received demonstrate that the majority of the data for the Standard Report was derived from PRF’s for prior assessment years. This data was developed based on the determinations of the County Assessor’s office and not on Hilt’s own training or experience. Additional data was inserted into the Standard Report by the Taxpayer based on his testimony regarding design and drafting work. There is no indication that the calculation shown in the Standard Report was verified using market data. The Standard Report is not an appraisal report containing a real property appraisers’ opinion of value or based on a mass appraisal model. The Standard Report does not set forth the valuation determination it is attempting to make. Moreover, the Standard Report does not comply with the Uniform Standards of Professional Appraisal Practice.

The Nebraska Supreme Court has held that an owner who is familiar with his property and knows its worth is permitted to testify as to its value.²⁹ However an opinion of value is no stronger than the facts upon which it is based.³⁰ As noted, the record before the Commission does not set forth sufficient information to support Hilt’s opinion of value or Standard Report value as representative of actual or market value. The Commission therefore finds that Hilt’s opinion of value and the Standard Report prepared by Hilt are not reliable or persuasive.

²⁸ E3:6-11

²⁹ *U. S. Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).

³⁰ See, *Bottorf v. Clay Cty. Bd. Of Equal.*, 7 Neb.App. 162, 167, 580 N.W.2d 561, 565 (1998). “It is well established that the value of the opinion of an expert witness is no stronger than the facts upon which it is based.”

The Commission finds that the size of the garage basement should be changed to 1,386 square feet, which would change the Replacement Cost New in the County Appraiser's assessment model to \$1,524,636. Next the physical depreciation of 7% should be applied reducing this value by \$106,725 to \$1,417,911. Then applying the 11.8% large residence multiplier indicated in the account notes would result in a further reduction of \$167,314 to \$1,250,597. The neighborhood adjustment of .93 would change the value to \$1,163,055 and the quality adjustment of .98 would bring the improvement value for the Subject Property to \$1,139,794. Adding the land value of \$125,000 for the Subject Property would result in a total valuation once the appropriate characteristics and depreciation are applied to the improvements of \$1,264,794 for tax year 2020.

V. EQUALIZATION

A. Law

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.³¹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.³² 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.³³ 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.³⁴ Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real

³¹ *Neb. Const.*, Art. VIII, § 1.

³² *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

³³ *Id.*; *Cabela's Inc. v. Cheyenne County Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

³⁴ *Cabela's Inc.* at 582, 623.

property that the results be correlated to show uniformity.³⁵ 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.³⁶ The constitutional requirement of uniformity in taxation extends to both rate and valuation.³⁷ 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.³⁸ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.³⁹

B. Facts & Analysis

The Taxpayer alleged that the assessed value of the Subject Property was not equalized with the assessed values of the improvements on other comparable properties. The Subject Property is improved with a 7,868 square foot ranch style property located in the Indian Creek (Estates) Subdivision. By the Taxpayer's own admission, the Subject Property is more than twice as large as any other ranch style property in the subdivision and more than 2,000 square feet larger than the next largest residence in the subdivision.⁴⁰ The properties not located in the Indian Creek (Estates) subdivision offered as comparable to the Subject Property differ from the Subject in style of construction, location, age, quality, condition, etc., and are thus not truly comparable to the Subject Property.⁴¹

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

³⁶ *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).

³⁷ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³⁸ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³⁹ *Id.* at 673, 94 N.W.2d at 50.

⁴⁰ E3:41-45

⁴¹ Appellate courts have affirmed the Commission's finding that properties were not similar when the record supports such a determination, see *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

The differences in the large residence multiplier and quality adjustments noted in part IV(B) of this opinion prior to the valuation determination of the Commission could arguably be demonstrative of a lack of equalization, however, after the Commission's application of these adjustments in that same section of this opinion any lack of uniformity is removed.

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.

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 2020 is vacated and reversed.⁴²
2. The taxable value of the Subject Property for tax year 2020 is:

Land:	\$ 125,000
<u>Improvements:</u>	<u>\$1,139,794</u>
Total:	\$1,264,794

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).

⁴² 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.

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 2020.
7. This Decision and Order is effective for purposes of appeal on December 7, 2022.⁴³

Signed and Sealed: December 7, 2022

Steven A. Keetle, Commissioner

SEAL

Robert W. Hotz, Commissioner

⁴³ 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.