

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

JARED M. FALTYS,
APPELLANT,

CASE NO: 20R 0329

V.

MADISON COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

DECISION AND ORDER
REVERSING THE DECISION
OF THE MADISON COUNTY
BOARD OF EQUALIZATION

For the Appellant:

Allison Mason,
Attorney at Law

For the Appellee:

Joseph Smith,
Deputy Madison County Attorney

This appeal was heard before Commissioners Robert W. Hotz and James D. Kuhn. Commissioner Hotz presided.

I. THE SUBJECT PROPERTY

The Subject Property consists of a 5,958 square foot 1.5-story single-family home built in 2017 and a 4,076 square foot chalice building built in 2011 located on 10.69 acres in Madison County, Nebraska. The legal description and Property Record File (PRF) for the Subject Property are found at Exhibits 9-11.

II. PROCEDURAL HISTORY

The Madison County Assessor determined the assessed value of the Subject Property at \$1,000,506 for tax year 2020. Jared M. Faltys (the Taxpayer) protested this assessment to the Madison County Board of Equalization (the County Board) and requested a taxable value of

\$765,000. The County Board determined the taxable value of the Subject Property for tax year 2020 was \$1,000,000.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on September 16, 2021. Prior to the hearing, the parties exchanged exhibits, as ordered by the Commission. Exhibits 1 through 11 were admitted into evidence at the hearing.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination 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,

¹ Exhibit 1.

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

⁴ *Id.*

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 that the County 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 cross appeal.⁹ 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.¹⁰ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹¹

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

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).

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).

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 Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.¹³ Nebraska courts have held that 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 Neb. Rev. Stat. § 77-201 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

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.¹⁸ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁹ 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

¹² Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁴ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

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).

¹⁸ Neb. Const., art. VIII, § 1.

¹⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

a disproportionate part of the tax.²⁰ 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.²¹ 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.²² 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 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.²³ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁴

V. FINDINGS OF FACT

A. Summary of the Evidence

1. Faltys Testimony

The Taxpayer, Jared Faltys, offered his own testimony. Faltys prepared a document describing what he believed to be comparable properties to the Subject Property.²⁵ Faltys asserted he selected four comparable properties in Madison County based primarily on the dollar amount of each sale being at or greater than \$750,000. In comparing each of the alleged comparable parcels to the Subject Property, Faltys asserted the sale price of each comparable was adjusted to account for differences in lot size. Faltys submitted

²⁰ *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).

²¹ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²² *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).

²³ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

²⁴ *Id.* at 673, 94 N.W.2d at 50.

²⁵ Exhibit 2.

multiple listing service printouts of the alleged comparable properties, but he provided no PRFs.²⁶

Exhibit 5 is a 5,296 square foot single-family home in Norfolk, Nebraska built in 2004, which sold in 2020 for \$765,000. Faltys asserted this property was comparable to the Subject Property in size and finish, but he acknowledged the Subject Property had a greater lot size.

Exhibit 6 is a 4,617 square foot home built in 1987 on a 40-acre parcel. This parcel sold in 2017 for \$997,000. Faltys stated the house is similar in size to the Subject Property but acknowledged the parcel size difference.

Exhibit 7 is a 6,265 square foot home on a 40-acre parcel, built in 2001, which sold in 2017 for \$863,500. Again, Faltys acknowledged the size difference of the parcels, but asserted the improvements on the property were comparable to those on the Subject Property.

Exhibit 8 is a property report prepared by a realtor which shows a single-family home at 610 Summit St, Norfolk, Nebraska, sold in 2018 for \$975,000. Faltys acknowledged this property was within the city limits of Norfolk, Nebraska, and would likely be the weakest comparable property due to its access to city services.

Regarding the Subject Property, Faltys stated that someone from the office of the County Assessor performed an inspection in August 2021 to complete measurements, including internal measurements, and to conduct a site visit. Faltys reiterated his belief that the correct valuation for the Subject Property is \$765,000 based upon his analysis of the comparable property sales.

In response to questions from the Commission, Faltys stated he determined his requested valuation using market analysis, not through an appraiser's opinion. Faltys stated Exhibits 5 through 8 were obtained through a multiple listing service and he admitted the

²⁶ Exhibits 5-8. The Order For Hearing required that any comparable properties submitted for equalization purposes include the PRF for the parcel. See Footnote 30 below.

Property Record Files (PRFs) for the purported comparables were not offered into evidence.

2. Wilcox Testimony

The Taxpayer also called Russell Wilcox. Wilcox was a realtor with Real Estate Solutions in Norfolk, Nebraska. Wilcox had been a realtor for four years. Wilcox stated that while he could not perform appraisals, as he was not a licensed appraiser under Nebraska law, he did provide broker price opinions, which he asserted were similar to an appraisal opinion. Wilcox stated he generally relied on market comparables and past sales and history to develop these broker price opinions.

Wilcox stated that in preparation of Exhibit 2, he researched the comparable properties and provided opinions to Faltys as to the valuations and adjustments made to the comparable properties to reach Faltys' ultimate opinion of value for the Subject Property.

Wilcox also testified as to the similarities and differences between the Subject Properties and the purported comparable properties listed in Exhibits 5 through 8. Wilcox stated his primary adjustments between the Subject Property and the comparable properties related to the size of the land component, with an adjustment of \$10,000 per acre. Wilcox stated that he did not take depreciation into account because his analysis was focused on market sales, which Wilcox stated had appreciated, rather than depreciated. Wilcox testified that, while he does not have a specific opinion as to the assessed value of the Subject Property, he did note that he was not aware of any residential sales in Madison County of \$1,000,000 or more.

In response to questions from the Commission, Wilcox admitted that he made no adjustments for the age of the comparable properties, nor were any adjustments made to account for variances in the square footage between the comparable properties and the Subject Property. However, Wilcox asserted that the age of a property can be reflected in

the sales price but is not necessarily guaranteed to be reflected in the sales price.

3. County Board's Case & Hackerott Testimony

The County Board called Jeff Hackerott, the Madison County Assessor. Hackerott had held that position for 18 years. Hackerott held the State Assessor's Certificate but was not a licensed appraiser. Hackerott was previously a licensed appraiser.

Hackerott testified he inspected the Subject Property on August 31, 2021, and due to that inspection, he determined the chalice building to have a lower value based upon a reduction to the square footage of the living area. As a result, Hackerott testified as to his determination of the value of the improvements on the Subject Property to be \$997,054, with \$622,910 allocated to the main house, and \$256,144 allocated to the chalice building. Hackerott maintained his opinion that \$78,000 should be allocated to the 10.69 acres of land. Exhibit 9 is a PRF for the Subject Property which reflects the updated valuation after that inspection, while Exhibit 10 is the PRF that was on file at the time of the County Board's tax year 2020 decision.

In describing the adjustments made to the chalice building between Exhibits 9 and 10, Hackerott testified that as to Exhibit 10, the base area of 2,038 square feet was correct, but the total area was not correct. Hackerott stated that an updated square footage for the second floor of the chalice could not be entered on Exhibit 9 due to the second floor's unique non-square shape. However, Hackerott testified the measurements in Exhibit 11 accurately reflected the square footage of the second floor of the chalice building as it was determined per the August 31, 2021, inspection.

In determining the valuation of the Subject Property, Hackerott testified when examining similar properties to determine comparables, site size, building size, age, and amenities were among the factors to be considered when selecting a comparable. Hackerott also testified that

he ultimately selected the same properties selected by Faltys as comparables to the Subject Property.

However, Hackerott testified a market analysis was not performed to reach the County Assessor's determination of value. Instead, he relied exclusively on the cost approach to determine the value for the Subject Property, as well as the valuation for the comparable properties. Hackerott stated he relied upon a computer-assisted mass appraisal (CAMA) system to compute the replacement cost and depreciation figures applied to the Subject Property. He testified the differences in value between the Subject Property and the comparables were due to differences in age, size, and amenities.

B. Analysis

The Taxpayer ultimately carries the burden to demonstrate, by clear and convincing evidence, that the County Board's decision was arbitrary or unreasonable. The Taxpayer requested a valuation of \$765,000,²⁷ a value equal to that of the August 5, 2019, sale price of the comparable property found at Exhibit 5. The Taxpayer's expert, Wilcox, provided an estimated broker's price opinion of \$825,000, based upon an adjustment of \$60,000 for the land size between the Exhibit 5 comparable and the Subject Property.²⁸ However, Wilcox, by his own testimony, is not, nor ever has been, a licensed real estate appraiser. Wilcox did not provide an opinion of value that purports to comply with the Uniform Standards of Professional Appraisal Practice (USPAP). When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.²⁹ Evidence was not adduced

²⁷ See Exhibit 1.

²⁸ See Exhibit 2.

²⁹ *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 850, 906 N.W.2d 285, 298 (2018).

at the hearing as to any professional standards governing Wilcox's opinion of value.

Additionally, the Taxpayer did not offer into evidence the Property Record Files for the comparable properties found at Exhibits 5 through 8.³⁰ Without the Property Record Files for the comparable properties, the Commission cannot see or analyze the basis for the valuation of the comparable properties, and therefore cannot determine whether those properties are truly comparable. Also, without the Property Record Files for the alleged comparable parcels, the Commission cannot determine the basis or the accuracy of Wilcox's purported adjustments. The Nebraska Supreme Court has held that even an expert's unsupported opinion of value is not competent evidence of the actual value of real property.³¹

Without the necessary supporting evidence to demonstrate the comparability and basis for adjustment between the comparable properties and the Subject Property, the Commission affords limited weight to those exhibits and testimony.

It must be noted that the County Board failed to timely provide copies of the Property Record File to the Taxpayer as ordered by the Commission. This did impact the Taxpayer's ability to prepare evidence to rebut the County's methodology in valuing the Subject Property. However, the taxpayer did not object to the admission of Exhibits 9, 10, or 11 into evidence. The Nebraska Supreme Court has previously held that failure to make a timely and proper objection or motion to strike will ordinarily bar a party from later claiming error in

³⁰ Paragraph 11 of the Commission's March 26, 2021, Order for Hearing and Notice of Hearing states:

PROPERTY RECORD FILES: Each party shall provide, as an exhibit, copies of the county's Property Record File for any parcel that party will assert is a comparable parcel.

NOTE: *A screen shot or print out of a web page is not a Property Record File. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office before the hearing.*

³¹ See, *McArthur v. Papio-Missouri River Natural Resources District*, 250 Neb. 96, 547 N.W.2d 716 (1996).

the admission of testimony.³² Further, the County Board's failure to provide the Taxpayer with a copy of the PRF for the Subject Property did not prevent the Taxpayer from requesting or entering into evidence the PRFs for its alleged comparable properties.

As Hackerott's testimony demonstrates, the County Board's decision was based upon incorrect measurements of the second floor of the chalice building, which was not corrected until after the County Board's decision had been made. These updated measurements were reflected in Exhibits 9 and 11, which were received without objection from the Taxpayer. These exhibits constitute competent evidence sufficient to rebut the presumption that the County Board faithfully performed its duties. These exhibits also provide clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

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 the reasons set forth above, the determination of the County Board is vacated and reversed.

³² *State v. Harris*, 263 Neb. 331, 340, 640 N.W.2d 24, 29 (2002).

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Madison County Board of Equalization determining the value of the Subject Property for tax year 2020 is vacated and reversed.
2. The assessed value of the Subject Property for tax year 2020 is:

Land	\$ 78,000
<u>Improvements</u>	<u>\$ 919,054</u>
Total	\$ 997,054

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Madison County Treasurer and the Madison 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 2020.
7. This Decision and Order is effective for purposes of appeal on June 9, 2023.³³

Signed and Sealed: June 9, 2023

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

³³ 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.