

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

JAMES A. HOPKINS
APPELLANT,

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NOS: 21R 0741 &
21R 0742

**DECISION AND ORDER
REVERSING THE DECISIONS
OF THE DOUGLAS COUNTY
BOARD OF EQUALIZATION**

For the Appellant:

James A. Hopkins,
Pro Se,

For the Appellee:

Jennifer D. Chrystal-Clark
Deputy Douglas County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Properties are two unimproved parcels located in Douglas County, Nebraska. The legal descriptions and Property Record Files (PRF) of the Subject Properties are found at Exhibits 3 and 5.

II. PROCEDURAL HISTORY

The Douglas County Assessor (County Assessor) determined the assessed values of the Subject Properties were \$102,800 (Lot 42) and \$97,000 (Lot 55) for tax year 2021. James A. Hopkins (the Taxpayer) protested these assessments to the Douglas County Board of Equalization (the County Board). The County Board determined the

taxable values of the Subject Properties for tax year 2021 were \$102,800¹ and \$97,000.²

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a consolidated hearing on May 30, 2023. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1 through 36 were admitted into evidence.

III. STANDARD OF REVIEW

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

¹ Exhibit 1.

² Exhibit 2.

³ 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).

⁴ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (citations omitted).

⁵ *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.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 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 that 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 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.¹¹ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹²

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).

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).

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.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 Nebraska courts have held that 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

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

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

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

¹⁵ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

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

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

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

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 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.²² 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.²³ 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.²⁴ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁵

V. FINDINGS OF FACT

A. Summary of the Evidence

It is undisputed that both Subject Properties are unimproved residential lots and that neither parcel is riverfront property or has a

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 *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).

²² *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²³ *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).

²⁴ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

²⁵ *Id.* at 673, 94 N.W.2d at 50.

river view. Both Subject Properties and each of the comparable parcels offered in evidence were in assessment neighborhood LEA 36000.

1. Testimony of James Hopkins

The Taxpayer offered his own testimony. Hopkins testified the assessment process was fair, but he asserted the assessment of the Subject Property was not equalized as compared to similar properties in the area. Hopkins provided evidence of a comparable property, Parcel #2118660050 (Lot 24) which was given a lower value following a protest of that property to the County Board. Exhibit 12:2 indicates Lot 24, also an unimproved parcel in the same subdivision as the Subject Properties, was assessed at \$1.59 per square foot. Hopkins provided a spreadsheet in which he compared the values of similar properties to calculate a per square foot price for the land.²⁶ He also noted that Lot 24 was initially assessed at \$122,000,²⁷ which was later reduced by the County Board to \$82,600 after the protest hearing.²⁸

2. Testimony of Scott Barnes

The Taxpayer called Scott Barnes to testify. Barnes had been employed with the Douglas County Assessor's Office for 11 years. He was not directly involved with the appraisal of the Subject Properties for tax year 2021 but did review the relevant Property Record Files and analyzed the assessments of comparable properties.

Barnes testified to his understanding Lot 24 was protested to the County Board in tax year 2021, leading to its lowered value. Barnes referred to Exhibit 35, which showed the 2021 Referee comments²⁹ for

²⁶ Exhibit 9.

²⁷ Exhibit 33:3.

²⁸ Exhibit 12:2.

²⁹ The county board of equalization may appoint one or more suitable persons to act as referees... The county board of equalization may direct that any protest filed in accordance with section 77-1502 shall be heard in the first instance by the referee in the manner provided for the hearing of protests by the county board of equalization. Upon the conclusion of the hearing in each case, the referee shall transmit to the county board of equalization all papers relating to the case, together with his or her findings and recommendations in writing. The county board of equalization, after considering all papers relating to the protest and the

several protested Lots, including Lot 24. The Referee's comment for Lot 24 states in its entirety, "[b]ased on a conversation with the owner and a review of the information provided I agree with the owner's estimate."³⁰ Barnes testified the Referee's comments did not provide enough information for him to know the basis for the reduction in value for Lot 24. Barnes also stated that Lot 24 was initially assessed at a lower price per square foot to account for economies of scale. Barnes reiterated that he could not determine exactly what justified the decrease in assessed value by the County Board.

Barnes testified Lot 23, which was closer in size to Lot 24, received a significant reduction in per square foot value due its unsuitability for building.³¹

Barnes testified that Lot 30 was a better comparable to the Subject Properties than Lot 24. Lot 30 also had its assessment lowered by the County Board. Like the Subject Properties, Lot 30 did not have a view of the river.³² Barnes testified that Lot 30 would represent a better comparable to the Subject Properties for equalization purposes.

Barnes testified Lot 42 would not be a good equalization comparable due to the lack of information in the Referee's comments.

In response to questions as to whether sales of properties in the market area supported the Assessor's valuations, Barnes stated there were two sales of vacant properties and several sales of improved parcels in the relevant timeframe. He also testified the mass appraisal

findings and recommendations of the referee, may make the order recommended by the referee or any other order in the judgment of the board of equalization required by the findings of the referee, or may hear additional testimony, or may set aside such findings and hear the protest anew. Neb. Rev. Stat. § 77-1502.01 ().

³⁰ Exhibit 35.

³¹ Exhibit 35.

³² Exhibit 35.

statistics gleaned from those sales showed the assessment models for both vacant and improved lots would meet mass appraisal standards.³³

3. Testimony of Kurt Skradis

Kurt Skradis was called to testify. Skradis had been employed with the County Assessor for 25 years. He was not directly involved with the assessments of the Subject Properties but had reviewed the evidence for the appeals. Skradis testified that his answers would have been substantively the same as those given by Barnes.

B. Analysis

“To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”³⁴ Additionally, a taxpayer is entitled to have their property assessed uniformly and proportionately, even if it results in an assessment at less than the actual value.³⁵

Neither Barnes nor Skradis could provide any reasonable basis for the Referee’s conclusion that Lot 24 should be reduced in value from \$122,000 to \$82,600. The Referee’s comments do not explain the recommendation or provide a basis for the recommendation, other than that it was based upon “...conversation with the owner and a review of the information provided...”³⁶ Barnes testified that sales within the market area would have supported the initial assessed value of \$122,000 for Lot 24. Therefore, in effect, the County Board reduced the assessed value of Lot 24 to 67.7% of its actual value.

Based upon the high comparability of the Subject Properties to Lot 24, the Commission finds that the Subject Properties warrant a similar reduction to 67.7% of their respective assessed values. Equalization is

³³ Exhibit 6:7-8.

³⁴ *Zabawa v. Douglas Cty. Bd. of Equal.*, 17 Neb. App. 221, 228, 757 N.W.2d 522, 529 (2008).

³⁵ *Constructors, Inc. v. Cass Cty. Bd. of Equal.*, 258 Neb. 866, 873, 606 N.W.2d 786, 792 (2000).

³⁶ Exhibit 35:1.

the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.³⁷

VI. CONCLUSION

The Commission finds the Taxpayer has established by clear and convincing evidence that the valuation placed on the Subject Properties when compared with valuations placed on another similar property 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.³⁸

The Commission also 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 determinations. The Commission also finds that there is clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For the reasons set forth above, the determinations of the County Board should be vacated and reversed.

³⁷ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

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

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the value of the Subject Properties for tax year 2021 are vacated and reversed.
2. The assessed values of the Subject Properties for tax year 2021 are:

Case No. 21R 0741 (Lot 42) \$69,596³⁹

Case No. 21R 0742 (Lot 55) \$65,669⁴⁰

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 2021.
7. This Decision and Order is effective for purposes of appeal on June 23, 2023.⁴¹

Signed and Sealed: June 23, 2023

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

³⁹ \$102,800 * .677 = \$69,596.

⁴⁰ \$97,000 * .677 = \$65,669.

⁴¹ 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.