

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Diane England Revocable Trust
Appellant,

v.

Keith County Board of Equalization
Appellee

Case No: 10C-005

Decision Affirming
Keith County
Board of Equalization

For the Appellant:

Diane England,
Diane England Revocable Trust

For the Appellee:

Randy Fair,
Keith County Attorney

Heard before, Commissioners Hotz and Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel located in Keith County, Nebraska. The parcel is improved with a 1,392 square foot modular office building built in in 2008, and a 606 square foot detached garage built prior to 2008. The legal description of the parcel is found at Exhibit 1. The property record card for the subject property is found at Exhibit 3.

II. PROCEDURAL HISTORY

The Keith County Assessor determined that the assessed value of the subject property was \$146,705 for tax year 2010. Diane England, Trustee, Edgar M. Cobb Trust, now the Diane England Revocable Trust¹ (Taxpayer) protested this assessment to the Keith County Board of Equalization (BOE) and requested an assessed valuation of \$85,000. The County Board determined that the assessed value for tax year 2010 was \$146,705. (E1).

The Taxpayer appealed the decision of the BOE to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits. The Commission held a hearing on July 13, 2011.

¹ Ownership of the subject property transferred from the Edgar M. Cobb Trust to the Diane England Revocable Trust during the pendency of this appeal, B. Diane England has been involved on behalf of the trusts which own the subject property since the protest was filed with the Keith County Board of Equalization.

III. STANDARD OF REVIEW

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.” *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

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.

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. Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.). Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. Cf. *Josten-Wilbert Vault Co. v. Board of Equalization 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 Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value) . The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

IV. VALUATION

A. Law

Under Nebraska law,

[a]ctual 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.

Neb. Rev. Stat. §77-112 (Reissue 2009). "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 section 77-1371, (2) income approach, and (3) cost approach." Neb. Rev. Stat. §77-112 (Reissue 2009). "Actual value, market value, and fair market value mean exactly the same thing." *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002). Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value. Neb. Rev. Stat. §77-131 (Reissue 2009). All real property in Nebraska subject to taxation shall be assessed as of January 1. See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009). All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Reissue 2009).

B. Summary of the Evidence

Cheryl Schiel, the Keith County Assessor, testified on behalf of the BOE. She stated that the Keith County Assessor's Office² used the Cost Approach to value the subject property. The replacement cost new of the modular office building was estimated to be \$96,688.³ Depreciation for each of the improvements or refinements was based upon its condition and life expectancy, based upon depreciation tables developed by the Keith County Assessor's Office. E3:2-3, E5.

² For the 2010 Tax year the Assessment function in Keith County was performed by the Property Tax Administrator until July 1, 2011. Cheryl Schiel was the Assessment Manager for Keith County for the January 1, 2010 assessment.

³ A building permit was issued for the modular office building on May 1, 2008. The estimated cost to build was shown as \$94,795. E8:1.

Using the cost approach, the replacement cost new of all improvements, less depreciation, was \$115,300. E3:2. The land was assessed at \$31,405 per a Neighborhood Land Table. E3:2, E4:1.

Schiel also testified that the last commercial reappraisal by the Keith County Assessor's office for the City of Ogallala was in 2005. She stated that a commercial reappraisal was scheduled for 2011, as required by Neb. Rev. Stat. §77-1311.03 (2011 Supp.).

Diane England testified on behalf of the Taxpayer regarding the valuation of the subject property. She asserted that the garage was much older than what was listed on the property record card and in the State Assessor's cost approach, but she offered no definite age or any quantifiable evidence of a different value. England also testified at length regarding alleged comparable parcels as discussed in Paragraph V below.

There is not clear and convincing evidence that the BOE's determination of the valuation of the subject property was arbitrary or unreasonable.

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 this Constitution." *Neb. Const.*, Art. VIII, §1. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991). 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. *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). Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property. See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999). 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. *Banner*

County v. State Board of Equalization, 226 Neb. 236, 411 N.W.2d 35 (1987). 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. *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). The constitutional requirement of uniformity in taxation extends to both rate and valuation. *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964). 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. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity. *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).

B. Summary of the Evidence

Diane England testified on behalf of the Taxpayer regarding the equalization of the subject property with other property in Keith County. She emphasized the disparities between the assessed values and sale prices of several alleged comparable properties in the area of the subject property. E10, E16.

It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.

Forney v. Box Butte County Bd. of Equalization, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998). England offered partial property record cards for each alleged comparable parcel, which did not include cost approach data. She made no adjustments to her comparables to account for differences between the comparables and the subject property, nor did she offer any evidence of actual value of the alleged comparables other than sale prices. The evidence allowed the comparison of assessed values to sale prices, but was insufficient to compare assessed values to actual values for purposes of uniformity of equalization.

Thomas Luhrs, a General Certified Appraiser, also testified on behalf of the Taxpayer. Luhrs had previously appraised the subject property at \$76,500 for estate settlement purposes as of July 22, 2010. E11:2. In his appraisal, he analyzed four comparable properties. E11:29-37. Luhr's gave a market value conclusion that the subject property had a value of \$76,500.

Luhrs also prepared Exhibit 15, a comparison of assessed values of twelve commercial properties in the area of the subject property. He did not give an opinion of the actual value of these properties, nor did he make any adjustments in comparison to the subject property. Luhr's testimony and appraisal were likewise insufficient to compare assessed values to actual values for purposes of uniformity of equalization.

There is not clear and convincing evidence that the BOE's determination of value violated the uniformity clause of the Nebraska Constitution.

VI. CONCLUSION

The Commission finds that the Taxpayer has not provided 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 the Taxpayer has not provided clear and convincing evidence that the County Board's determination was arbitrary or unreasonable.

For all of the reasons set forth above, the decision of the County Board is affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The Decision of the Keith County Board of Equalization determining the value of the subject property for tax year 2010 is affirmed.⁴
2. That the Assessed value of the Subject property for tax year 2010 is:

⁴ Assessed value, as determined by the county board of equalization, 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 BOE at the protest proceeding.

Land	\$ 31,405
Improvements	<u>\$115,300</u>
Total	\$146,705

3. This decision and order, if no appeal is timely filed, shall be certified to the Keith County Treasurer and the Keith County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2010 Cum. Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2010.
7. This order is effective for purposes of appeal on December 6, 2011.

Signed and Sealed: December 6, 2011

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2010 Cum. Supp.), other provisions of Nebraska Statute and Court Rules.