

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

ELN, LLC, &
Love In Action,
Appellant,
v.
Buffalo County Board of Equalization,
Appellee

Case Nos: 11R-141, 11R-144, 11R-148,
11R-154, 11R-155, 11R-160, 11R-167,
11R178, 11R-183, & 11R-190

Order Affirming
the Determinations of the
Buffalo County Board of Equalization

For the Appellant:
Jack W. Besse,
Knapp, Fangmeyer, Aschwege,
Besse & Marsh, P.C.

For the Appellee:
Andrew Hoffmeister,
Deputy Buffalo County Attorney

Heard before Commissioners Hotz and Salmon

I. THE SUBJECT PROPERTY

The Subject Property consists of 10 mobile homes of various sizes, owned by Love In Action, a nonprofit organization, and located on lots owned by ELN, LLC. (ELN). The lots are part of a 60.4 acre commercial parcel located in Buffalo County, Nebraska, which is improved with 383 residential mobile home lots. Each mobile home is an improvement on leased private land. The legal descriptions of the Subject Properties are found in the property record cards.¹

II. PROCEDURAL HISTORY

The following table indicates the assessed value of each subject property for tax year 2011 as determined by the Buffalo County Assessor, the assessed valuation as requested by ELN and Love In Action (Taxpayer) when this assessment was protested to the Buffalo County Board of

¹ 11R-141, E72:4; 11R-144, E73:4; 11R-148, E74:4; 11R-154, E88:4; 11R-155, E89:4; 11R-160, E75:4; 11R-167, E76:4; 11R-178, E110:4; 11R-183, E115:4; 11R-190, E77:4.

Equalization (County Board), and the assessed value for tax year 2011 as determined by the County Board:

Case No.	Assessed Value	Protested Value	Board Value	Reference
11R-141	\$41,560	\$12,500	\$28,735	72:2
11R-144	\$48,545	\$16,000	\$27,860	73:2
11R-148	\$43,935	\$12,500	\$21,430	74:2
11R-154	\$41,735	\$12,500	\$28,855	88:2
11R-155	\$27,390	\$20,000	\$27,390	89:2
11R-160	\$52,510	\$16,000	\$27,825	75:2
11R-167	\$41,585	\$12,500	\$28,750	76:2
11R-178	\$42,355	\$20,000	\$42,355	110:2
11R-183	\$54,095	\$16,000	\$28,200	115:2
11R-190	\$26,450	\$12,500	\$26,450	77:2

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission).² Prior to the hearing, the parties exchanged 210 exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of all of the exchanged exhibits. The Commission held a consolidated hearing on March 19, 2012.³

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.”

² Love In Action executed an Assignment, dated August 25, 2011, authorizing ELN, LLC to prosecute these appeals. E144:3.

³ These 10 appeals were also consolidated for hearing with 59 related appeals in Case Nos: 11C-231, 11R-142, 11R-143, 11R-145, 11R-146, 11R-147, 11R-149, 11R-150, 11R-151, 11R-152, 11R-153, 11R-156, 11R-157, 11R-158, 11R-159, 11R-161, 11R-162, 11R-163, 11R-164, 11R-165, 11R-166, 11R-168, 11R-169, 11R-170, 11R-171, 11R-172, 11R-173, 11R-174, 11R-175, 11R-176, 11R-177, 11R-179, 11R-180, 11R-181, 11R-182, 11R-184, 11R-185, 11R-186, 11R-187, 11R-188, 11R-189, 11R-191, 11R-192, 11R-193, 11R-194, 11R-195, 11R-196, 11R-197, 11R-198, 11R-199, 11R-200, 11R-201, 11R-202, 11R-203, 11R-204, 11R-205, 11R-206, 11R-207, & 11R-208

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).

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.” Neb. Rev. Stat. §77-5016(8) (2011 Supp.). 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. Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

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).

The term real property means:

- (1) All land;
- (2) All buildings, improvements, and fixtures, except trade fixtures;
- (3) *Mobile homes, cabin trailers, and similar property, not registered for highway use, which are used, or designed to be used, for residential, office, commercial, agricultural, or other similar purposes*, but not including mobile homes, cabin trailers, and similar property when unoccupied and held for sale by persons engaged in the business of selling such property when such property is at the location of the business;
- (4) Mines, minerals, quarries, mineral springs and wells, oil and gas wells, overriding royalty interests, and production payments with respect to oil or gas leases; and
- (5) All privileges pertaining to real property described in subdivisions (1) through (4) of this section.

Neb. Rev. Stat. §77-103 (Reissue 2009) (emphasis added).

The term improvements on leased land means, "... any item of real property defined in subdivisions (2) through (4) of section 77-103 which is located on land owned by a person other than the owner of the item."

Neb. Rev. Stat. §77-117 (Reissue 2009).

Improvements on leased land, other than leased public lands, shall be assessed to the owner of the leased lands unless before March 1, following any construction thereof or change in the improvements made on or before January 1, the owner of the leased lands or the lessee thereof files with the county assessor, on a form prescribed by the Tax Commissioner, a request stating that specifically designated improvements on such leased lands are the property of the lessee. The improvements shall be assessed as real property, and the taxes imposed on the improvements shall be collected by levy and sale of the interest of the owner in the same manner as in all other cases of the collection of taxes on real property. When the request is filed by the owner of the leased lands, notice shall be given by the county assessor to the lessee at the address on the request.

Neb. Rev. Stat. § 77-1376 (Reissue 2009). When assessing improvements on leased lands:

- (1) If improvements on leased land are to be assessed separately to the owner of the improvements, the actual value of the real property shall be determined without regard to the fact that the owner of the improvements is not the owner of the land upon which such improvements have been placed.
- (2) If the owner of the improvements claims that the value of his or her interest in the real property is reduced by reason of uncertainty in the term of his or her tenancy or because the prospective termination or expiration of the term, he or she shall serve notice of such claim in writing by certified mail on the owner of the land before January 1 and shall at the same time serve similar notice on the county assessor, together with his or her affidavit that he or she has served notice on the owner of the land.
- (3) If the county assessor finds, on the basis of the evidence submitted, that the claim is valid, he or she shall proceed to apportion the total value of the real property between the owner of the improvements and the owner of the land as their respective interests appear.
- (4) The county assessor shall give notice to the parties of his or her finding by certified mail on or before June 1.
- (5) The proportions so established shall continue from year to year unless changed by the county assessor after notice on or before June 1 or a claim is filed by either the owner of the improvements or the owner of the land in accordance with the procedure provided in this section.

Neb. Rev. Stat. §77-1375 (Reissue 2009).

Evidence of sale price alone may not be sufficient to overcome the presumption that the board of equalization has valued the property correctly. But where, as in this case, the evidence discloses the circumstances surrounding the sale and shows that it was an arm's length transaction between a seller who was not under compulsion to sell and a buyer who was not compelled to buy, it should receive strong consideration.

Potts v. Board of Equalization of Hamilton County, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982).

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).

B. Summary of the Evidence

The subject properties, consisting of 10 mobile homes of various sizes, are owned by Love In Action,⁴ a nonprofit organization. E144:3. Each of the 10 mobile homes is located on a lot owned by ELN, as part of a 60.4 acre commercial parcel located in Buffalo County, Nebraska. The commercial parcel is improved with a total of 383 residential mobile home lots. Therefore, each of the 10 mobile homes owned by Love in Action is an improvement on leased private land.

Robert Spencer testified on behalf of the Taxpayer. He stated that he was a Member of ELN, and was the property manager of the mobile home park owned by ELN. Spencer stated that Love In Action owned these 10 mobile homes and received all tenant rental payments in relation to each mobile home by virtue of what Spencer characterized as a tithe involving owners of ELN and the nonprofit organization Love In Action. Spencer further explained that ELN managed these 10 mobile homes in conjunction with the management of all other mobile homes owned by ELN at the mobile home park, at no cost to Love In Action.

Spencer testified that when tenants rented both a lot and a mobile home owned by either ELN or Love In Action, they made only one monthly rental payment, wherein the lot rental rate was combined with the rental rate for the mobile home. Rental rates as of January 1, 2011, were \$495, \$595, or \$615, depending upon the dimensions of the mobile home. According to

⁴ 11R-141, E72:4; 11R-144, E73:4; 11R-148, E74:4; 11R-154, E88:4; 11R-155, E89:4; 11R-160, E75:4; 11R-167, E76:4; 11R-178, E110:4; 11R-183, E115:4; 11R-190, E77:4.

Spencer, many tenants at the mobile home park signed multi-year leases extending for as long as 150 months.

Spencer testified specifically about only two of these ten mobile homes. In Case #11R-141, Spencer testified that ELN paid \$12,500 for the three bedroom mobile home. The 14 foot by 66 foot mobile home was manufactured in 2008. E72:4, E143:5. According to the property record card, the mobile home was sold February 5, 2008, at a price of \$23,000. E72:4, E143:5. Spencer testified the Taxpayer had advertised to sell the mobile home for \$12,500. In Spencer's opinion, the cost of the mobile home in new condition would be \$20,398. The Taxpayer offered an invoice for the same make and model which was sold in new condition by a seller in Indiana at \$20,398 on February 5, 2007. E143:7. The County Board determined taxable value of the subject property mobile home at \$28,735. E72:2,4, E143:2.

The price paid for a similar home from a seller in Indiana on February 5, 2007, is not persuasive evidence of the market value of the subject property on January 1, 2011. The price paid by the Taxpayer in 2008 for the subject property is credible evidence, but it is only one indicia of the market value of the property as of January 1, 2011. A purchase price, standing alone, is not conclusive evidence of market value. "Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value." *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998). Other than these sales prices, no other evidence was offered to prove value of the subject property as of January 1, 2011. The Commission finds that the evidence is insufficient to prove that the determination by the County Board was arbitrary or unreasonable.

In Case #11R-144, Spencer testified the subject property was a three bedroom mobile home, with dimensions of 16 feet by 76 feet, manufactured in 2008. E73:4,7, E144:5-6. According to the property record card, the mobile home was sold January 1, 2009, at a price of \$28,455. E73:4, E144:5. In Spencer's opinion, the taxable value of the subject property mobile home should be \$16,000. The Taxpayer offered a Bill of Sale of a similar mobile home with the same make and dimensions, but manufactured in 2009, which sold in used condition on January 1, 2011 from an unidentified seller for \$15,800. E144:11. The Taxpayer also offered an invoice for a mobile home with the same dimensions, but manufactured in 2011, which was sold new by

a seller in Indiana at \$22,000 on an unknown date. E144:9-10. The County Board determined taxable value of the subject property mobile home at \$27,860. E73:2,4.

The price paid for a newer mobile home from a seller in Indiana on January 1, 2011, is not persuasive evidence of the market value of the subject property on January 1, 2011. The price paid for a new mobile home with the same dimensions on an unknown date is also not persuasive evidence of the market value of the subject property on January 1, 2011. The price paid by the Taxpayer on January 1, 2009, is credible evidence, but it is only one indicia of the market value of the property as of January 1, 2011. A purchase price, standing alone, is not conclusive evidence of market value. “Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value.” *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998). Other than these sales prices, no other evidence was offered to prove value of the subject property as of January 1, 2011. The Commission finds that the evidence is not sufficient to prove that the determination by the County Board was arbitrary or unreasonable.

The Taxpayer offered no specific testimony regarding evidence of value for the subject properties in case #11R-148, 11R-154, 11R-155, 11R-160, 11R-167, 11R178, 11R-183, and 11R-190. The Commission finds that there is not competent evidence to rebut the presumption in favor of the County Board’s determinations and there is not clear and convincing evidence that the County Board’s determinations were arbitrary or unreasonable.

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). 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. 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

For purposes of seeking lower equalized taxable values for each of these 10 mobile homes, the Taxpayer offered property record cards for several mobile homes that were asserted to be comparable to the Taxpayer's mobile homes. E140. Spencer also testified about some of the alleged comparable mobile homes. The mobile homes offered as comparables were of various sizes, were manufactured at varying quality levels, and included various amenities.

Scott Anderson, an employee with the Buffalo County Assessor's office (Assessor) testified on behalf of the County Board. Both Spencer and Anderson testified that neither the Taxpayer nor the Assessor made any attempts to make adjustments to any of the comparables. Anderson testified that the Assessor typically did not conduct internal inspections of mobile homes, and had not done any internal inspections of any of the subject property mobile homes or of any of

the mobile homes offered as comparables. Without evidence of specific similarities or differences between the subject property and the alleged comparables, with quantified adjustments, the Commission has no basis for ordering equalized taxable values for the subject property mobile homes.

V. CONCLUSION

The Commission finds that there is not 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 not clear and convincing evidence that the County Board’s decision was arbitrary or unreasonable.

For all of the reasons set forth above, the appeal of the Taxpayer is denied and the decision of the County Board is affirmed.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Buffalo County Board of Equalization determining the value of the subject property for tax year 2011 is affirmed.
2. The assessed value of the subject property for tax year 2011 is:

Case No.	Assessed Value
11R-141	\$28,735
11R-144	\$27,860
11R-148	\$21,430
11R-154	\$28,855
11R-155	\$27,390
11R-160	\$27,825
11R-167	\$28,750
11R-178	\$42,355
11R-183	\$28,200
11R-190	\$26,450

3. This decision and order, if no appeal is timely filed, shall be certified to the Buffalo County Treasurer and the Buffalo County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2011 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 2011.
7. This order is effective for purposes of appeal on April 11, 2012.

Signed and Sealed: April 11, 2012.

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 (2011 Supp.), other provisions of Nebraska Statute and Court Rules.