

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Farnam 36 LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee,

Case Nos: 10C-498 & 11C-577

Decision and Order to Reverse the
Determinations of the Douglas County
Board of Equalization

For the Appellant:

Thomas Barrett,
Attorney at Law,
Sean T. Mullen,
Hancock & Dana.

For the Appellee:

Matthew J. Boever,
Deputy Douglas County Attorney

These appeals were heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a 28,500 square foot commercial parcel located at 327 S. 37th Street, improved with a paved parking lot in Omaha, Douglas County, Nebraska. The legal description of the parcel is found at Exhibit 3, page 5. The property record card for the subject Property is found in Exhibit 3.

II. PROCEDURAL HISTORY

The Douglas County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$125,700 for tax year 2010.¹ Farnam 36 LLC (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$76,677.² The County Board determined that the taxable value for tax year 2010 was \$125,700.³

¹ E1:1.

² E5:1.

³ E1:1.

For tax year 2011, the Assessor determined that the assessed value of the Subject Property was \$125,700.⁴ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$82,921.⁵ The County Board determined that the taxable value for tax year 2010 was \$125,700.⁶

The Taxpayer appealed the decisions of the County Board for both tax years to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged 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 exchanged exhibits. The Commission held a consolidated hearing on November 27, 2012.⁷

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is *de novo*.⁸ 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."⁹

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.¹⁰

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

⁴ E2:1.

⁵ E6:1.

⁶ E2:1.

⁷ This hearing was also consolidated for hearing purposes with Case Nos 10C-497 & 11C-576 and 10C-499 & 11C-578.

⁸ See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. 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 Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁹ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

¹⁰ *Id.*

arbitrary.¹¹ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹²

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.¹³ 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.¹⁴

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.”¹⁵ 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.”¹⁶

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.¹⁷

“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.”¹⁸ “Actual value, market value, and fair

¹¹ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

¹² *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹³ 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).

¹⁴ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹⁵ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

¹⁶ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

¹⁷ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁸ *Id.*

market value mean exactly the same thing.”¹⁹ 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.²⁰ All real property in Nebraska subject to taxation shall be assessed as of January 1.²¹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²²

B. Summary of the Evidence

The Taxpayer did not allege that the taxable value of the Subject Property was incorrect, rather the Taxpayer presented evidence and argument that the assessed taxable value of the Subject Property was not equalized with the taxable values of similar property. No evidence was offered relating to the taxable value of the Subject Property for either tax year. The evidence offered by the Taxpayer went to the issue of equalization.

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.”²³ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁴ 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.²⁵ 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.²⁶ 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.²⁷ Taxpayers are

¹⁹ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

²⁰ Neb. Rev. Stat. §77-131 (Reissue 2009).

²¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

²² Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²³ *Neb. Const.*, Art. VIII, §1.

²⁴ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁵ *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).

²⁶ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²⁷ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

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.²⁸ The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁹ 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 [sic].”³⁰ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”³¹

B. Summary of the Evidence

For both tax years, the County Board determined the taxable value of the land component of the Subject Property to be \$99,800.³² The County Board relied upon a land value summary prepared by the Assessor.³³ Based upon its size, the taxable value of the land component of the Subject Property is determined to be \$3.50 per square foot.³⁴

The Taxpayer asserted that the Subject Property was not equalized with an adjacent parcel located at 3624 Dewey Street (3624 Dewey).³⁵ The Subject Property and 3624 Dewey are located on the same city block.³⁶ Like the Subject Property, 3624 Dewey was improved with a paved parking lot.³⁷ The size of the 3624 Dewey parcel was 18,010 square feet.³⁸ The taxable value of the land component of 3624 Dewey was determined to be \$36,000 for both tax years 2010 and 2011.³⁹ Based upon its size, the taxable value of the land component of 3624 Dewey is determined to be \$2.00 per square foot.⁴⁰

²⁸ *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).

²⁹ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³⁰ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³¹ *Id.* at 673, 94 N.W.2d at 50.

³² E1:1, E2:1.

³³ E3:5, E4:5.

³⁴ \$99,800 / 28,500 square feet.

³⁵ The Property Record Cards for 3624 Dewey are found at Exhibit 7:8-12 and Exhibit 8:8-12.

³⁶ E3:3-4.

³⁷ E7:8, E8:8.

³⁸ E7:8, E8:8.

³⁹ E7:12, E8:12.

⁴⁰ \$36,000 / 18,010 square feet.

The Taxpayer called Greg Weisheipl, a Senior Commercial Property Appraisal Manager for the Assessor, and General Certified Appraiser, to testify concerning the Subject Property and 3624 Dewey. When asked why the land component of 3624 Dewey had a taxable value of \$2.00 per square foot while the land component of the Subject Property had a taxable value of \$3.50 per square foot, Weisheipl testified he could not explain the difference.

We find that in order to satisfy the requirements of the Uniformity Clause of the Nebraska Constitution,⁴¹ the taxable value of the land component of the Subject Property should be based upon the same value per square foot as was applied to 3624 Dewey for both tax years. Therefore, we find that the taxable value of the land component of the Subject Property should be \$57,000,⁴² rather than \$99,800.

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 determination of taxable value of the Subject Property should be vacated and reversed.

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the values of the Subject Property for tax years 2010 and 2011 are reversed.⁴³
2. The taxable value of the subject property for both tax years 2010 and 2011 is:

Land	\$57,000
Improvement	<u>\$25,935</u>
Total	\$82,935

⁴¹ Neb. Const., Art. VIII, §1.

⁴² 28,500 square feet x \$2 per square foot.

⁴³ 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.

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 (2012 Cum. Supp.).
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 years 2010 and 2011.
7. This Decision and Order is effective for purposes of appeal on May 2, 2013.

Signed and Sealed: May 2, 2013.

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 (2012 Cum. Supp.), other provisions of Nebraska Statute and Court Rules.