

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

VPN Partners, LLC,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 12R 067

Decision and Order Affirming Lancaster
County Board of Equalization

1. A Single Commissioner hearing was held on November 25, 2013, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Salmon.
2. Robert L. Miller was present at the hearing for VPN Partners, LLC (Taxpayer).
3. Jeff John, Appraiser for Lancaster County Assessor’s Office, was present for the Lancaster County Board of Equalization (the County).
4. The Subject Property (Subject Property) is unimproved rural residential parcel, with a legal description of: Outlot B View Pointe North, 35.38 acres, Lancaster County, Nebraska.

Background

5. The Lancaster County Assessor assessed the Subject Property at \$212,300 for tax year 2012.
6. The Taxpayer protested this value to the Lancaster County Board of Equalization and requested an assessed value of \$0 for tax year 2012.
7. The Lancaster County Board of Equalization determined that the assessed value of the Subject Property was \$212,300 for tax year 2012.
8. The Taxpayer appealed the determination of the County to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

9. The Commission’s review of the determination of the County Board of Equalization is de novo.¹ “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

¹ 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).

been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.”²

10. When considering an appeal 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
11. 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.⁵
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
14. The Taxpayer asserted that the Subject Property should be valued at \$0 for January 1, 2012. He noted that there are covenants on the property that restrict building on the Outlot.
15. The Homeowners association purchased the Subject Property December 14, 2011. He asserted that on June 30, 2011 Lincoln City-Lancaster Planning Commission voted 7-0 to amendment to the View Point North Community Unit Plan, with conditions of Conservation Easement. On April 4, 2012 the Lincoln City-Lancaster County Planning Commission voted to adopt the resolution finding the Conservation Easement with the Lower Platte South NRD to be in conformance with the 2040 Comprehensive Plan. The Taxpayer asserts that because of this Conservation Easement and the Covenants, the Subject Property should be valued at \$0 for January 1, 2012.
16. A document was provided from the County Appraiser titled Lancaster County Assessor/Register of Deeds for Tax Year 2012 showing the New Subdivision name of View Point North 1st Addition. At that time the Subject Property was split into 3 parcels.

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ 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).

Lots one and two were buildable lots and Outlot A with the restrictions from the Covenants.

17. The issue before the Commission is the value of the Subject Property as of January 1, 2012.⁸ The Conservation Easement was not executed on January 1, 2012, and the Subject Property was not subject to its restrictions as of this date. The Commission finds that the restrictions in the Conservation Easement would not have impacted the actual value of the Subject Property as of January 1, 2012.
18. While the Taxpayer asserts that the Subject Property should have no value, the Commission notes that the Nebraska Supreme Court has expressly rejected the assertions that common area associated with a sub development has no value due to use restrictions placed upon the parcel by a neighborhood association.⁹ In particular the Nebraska Supreme Court held that the restrictions placed on a subject property by a neighborhood association lack “sufficient formality, definition, and duration to constitute valid restrictions.”¹⁰ Likewise, the Nebraska Supreme Court has held that the value of a parcel used as common area by a neighborhood association is not absorbed into the value of properties with rights of use to the property.¹¹
19. The Commission finds that the Subject Property had value as of January 1, 2012, and should not be assessed at \$0.
20. Sales price may be taken into consideration, but it is not conclusive of actual value.¹² It is necessary to know the “character and circumstances” of a sale in order to determine that a sale is competent evidence of actual value.¹³ Sale price “is only evidence to be considered along with all other evidence.”¹⁴ Where evidence indicates that a sale was part of an arm’s length transaction, the sale price should be given strong consideration.¹⁵ Sales price is not always the best evidence of value, and that each determination must be made on a case by case basis.¹⁶ “The statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its ‘market value in the

⁸ See, Neb. Rev. Stat. §77-1301 (2012 Cum. Supp.) (indicating that real property must be assessed as of January 1 in the tax year in question).

⁹ See, *Beaver Lake Association v. County Board of Equalization of Cass County*, 210 Neb. 247, 313 N.W.2d 673 (1981).

¹⁰ *Id.* at 257, 313 N.W.2d at 679.

¹¹ *Id.*

¹² See, *Novak v. Board of Equalization*, 145 Neb. 664, 666, 17 N.W.2d 882, 883 (1945); *Collier v. County of Logan*, 169 Neb. 1, 8, 97 N.W.2d 879, 885 (1959); *Josten-Wilbert Vault Co. v. Board of Equalization*. 179 Neb. 415, 417, 138 N.W.2d 641, 643 (1965); *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 46, 328 N.W.2d 175, 180 (1982); *US Ecology, INC., v. Boyd County Board of Equalization*, 256 Neb. 7, 18, 588 N.W.2d 575, 583 (1999); *Cabela’s Inc. v. Cheyenne County Bd. Of Equalization*, 8 Neb.App. 582, 591, 597 N.W.2d 623, 632 (1999) (citations omitted).

¹³ *Josten-Wilbert Vault Co. v. Board of Equalization*. 179 Neb. 415, 417, 138 N.W.2d 641, 643 (1965).

¹⁴ *Id.*

¹⁵ *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 47, 328 N.W.2d 175, 181 (1982).

¹⁶ *Id.*

ordinary course of trade.”¹⁷ This interpretation is required by Nebraska Statutes section 77-112.¹⁸

21. Nebraska Statutes section 77-112 and Nebraska common law comport with current professionally accepted mass appraisal methods. “The terms *price*, *cost*, and *value* are used and defined carefully by appraisers.”¹⁹ “The term price refers to the amount a particular purchaser agrees to pay and a particular seller agrees to accept under the circumstances surrounding their transaction.”²⁰ “Actual value, market value, and fair market value mean exactly the same thing.”²¹ Actual value is defined by Nebraska Statutes section 77-112 and means “the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market” and not the particular amount of a specific transaction.²² The distinctions between *price* and *actual value* are meaningful. They acknowledge that circumstances and factors may effect a particular purchase price to such an extent that it is of limited value or irrelevant in determining the actual value of a property. Factors which tend to illustrate that a transaction is not an arm’s length transaction harm the credibility and relevance of a purchase price in determining the actual value of a subject property.
22. An arm’s length transaction is defined as: “A transaction between unrelated parties under no duress.”²³ Some types of transactions are generally considered to be non-arm’s-length transactions because they are not made on the open market or one or all of the parties involved in the transaction are not operating with the objective of maximizing their financial position.²⁴
23. The Taxpayer testified that the sale price was determined by previous owner who was not seeking to maximize his financial position in the sale, but seeking to unload a property that he could not use according to his desires. There is no evidence that the Subject Property was listed on the open market prior to the sale, or that any other offers were sought or reviewed by the seller.
24. The Commission finds that the sale of the Subject Property was not part of an arm’s length transaction and is not competent evidence of the actual value of the Subject Property or clear and convincing evidence that the County Board was arbitrary or unreasonable.

¹⁷ *US Ecology, INC., v. Boyd County Board of Equalization*, 256 Neb. 7, 18, 588 N.W.2d 575, 583 (1999) (citing Neb. Rev. Stat. §77-112). See also, *Cabela’s Inc. v. Cheyenne County Bd. Of Equalization*, 8 Neb.App. 582, 591, 597 N.W.2d 623, 632 (1999) (citations omitted).

¹⁸ *Cabela’s Inc. v. Cheyenne County Bd. Of Equalization*, 8 Neb.App. 582, 591, 597 N.W.2d 623, 632 (1999) (citations omitted).

¹⁹ Appraisal Institute, *The Appraisal of Real Estate*, at 21 (13th ed. 2008).

²⁰ *Id.*

²¹ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

²² Neb. Rev. Stat. §77-112 (Reissued 2009).

²³ Appraisal Institute, *The Dictionary of Real Estate Appraisal*, at 18 (4th ed. 2002).

²⁴ International Association of Assessing Officers, *Mass Appraisal of Real Property*, at 53-54 (1999).

25. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
26. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Lancaster County Board of Equalization determining the value of the Subject Property for tax year 2012 is Affirmed.
2. That the Taxable value of the Subject Property for tax year 2012 is:

<u>Land</u>	<u>\$212,280</u>
Total	\$212,280

3. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster 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 year 2012.
7. This Decision and Order is effective on November 27, 2013.

Signed and Sealed: November 27, 2013

Nancy J Salmon, Commissioner