

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Angela H. Heimes,
Appellant,

v.

Cass County Board of Equalization
Appellee

Case No: 11R 083

Decision Reversing
County Board of Equalization

BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a residential parcel improved with a boat dock, with a legal description of: Beaver Lake Lot 1649A 7-11-14.
2. The Cass County Assessor assessed the Subject Property at \$87,710 for tax year 2011.
3. Angela H. Heimes (herein referred to as the “Taxpayer”) protested this value to the Cass County Board of Equalization (herein referred to as the “County Board”) and requested an assessed value of \$55,000 for tax year 2011.
4. The County Board determined that the assessed value of the Subject Property was \$87,710 for tax year 2011.
5. The Taxpayer appealed the determination of the County to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
6. A Single Commissioner hearing was held at the State Office Building, in Lincoln, Nebraska, before Commissioner Thomas D. Freimuth.
7. Angela H. Heimes, the Taxpayer, was present at the hearing.
8. Allen Sutcliffe, the Cass County Assessor, was present for the County Board.

STANDARD OF REVIEW & GENERAL VALUATION LAW

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 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

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).

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

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. Nebraska Statutes section 77-112 defines actual value as follows:

Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. 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. 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.⁸

VALUATION ANALYSIS

15. The Property Record Card submitted by the County at the hearing indicates that the Taxpayer purchased the Subject Property for \$55,000 on May 17, 2010. The Property Record Card also indicates that the Subject Property sold for \$44,500 in 2003 and for \$43,000 in 2000.

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) (2010 Cum. Supp.).

⁶ *Omaha Country Club v. Dodge 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).

⁸ Neb. Rev. Stat. § 77-112 (Reissue 2009).

16. While the Subject Property is improved with a boat dock, the Commission notes that the Property Record Card indicates that the value (\$210) of this improvement is minimal.
17. The Taxpayer asserted that the Subject Property should be valued at its May 2010 purchase price in the amount of \$55,000 for tax year 2011. In support of this assertion, the Taxpayer indicated that the sale is the best evidence of value because Beaver Lake real estate sales were adversely affected by the economic crisis that began in 2007 and because the transaction occurred after a lengthy marketing process.
18. The Taxpayer stated that she obtained an appraisal of the Subject Property prior to the purchase, which stated a value of \$55,000. The Taxpayer, however, did not submit this appraisal at the hearing.
19. In further support of her assertion that the purchase price is the best evidence of value for tax year 2011, the Taxpayer provided a copy of a letter authored and signed by Marla Alberts, a realtor with CBSHOME Real Estate. The letter, which is dated August 4, 2011, states that Ms. Alberts marketed the Subject Property for 367 days prior to the May 2010 sale, and it indicates that the poor condition of the real estate market was such that the value of the parcel was equal to its sale price for tax year 2011 purposes.⁹ The letter also states that listing prices ranged from \$104,000 to \$65,000, but that offers were not generated until the asking price was lowered to the latter amount.
20. The Alberts letter further refers to “[a] similar lot” located at 8885 Verdon Circle. The letter states that this property “was on the market for 231 days, priced as high as \$75,000, and finally sold for \$60,000.”
21. Ms. Alberts was not available for questioning at the hearing. The Commission notes, however, that the statements contained in the Alberts letter concerning the marketing of the Subject Property were not refuted by the County.
22. The Commission further notes that the reference in the Alberts letter regarding the sale of the alleged comparable property at 8885 Verdon Circle was not supported by any documentation, including a property record card. Additionally, while the County Assessor stated that he was unaware of the sale of this property, he did indicate that its view of the lake is similar to that of the Subject Property. He also stated that the 8885 Verdon Circle transaction was not included in his two-year look-back sales file that included qualified sales during the period of July 1, 2008 through June 30, 2010, either because it was not an arm’s length sale or because it occurred before or after the two-year look-back period. Therefore, the Commission is unable to find significant probative value regarding the 8885 Verdon Circle sale referenced in the Alberts letter.
23. The County Assessor stated that he had six years of experience regarding sales of Beaver Lake properties. During this period, he stated that he has not ascertained a logical pattern in terms of Beaver Lake sale prices, and he used the word “hodgepodge” to describe

⁹ The letter further states that the Subject Property was listed by other agents and marketed on a ‘for sale by owner’ basis prior to Ms. Alberts’ involvement.

these sales. He also stated that the economic crisis that began in 2007 adversely affected sales of Beaver Lake properties.

24. As an illustration of the illogical nature of Beaver Lake sale prices, the County Assessor stated that at least one Beaver Lake property sold for less than market value due to the seller's desire to avoid \$75 monthly association fees. The County Assessor, however, did not provide a property record card relating to this transaction.
25. The County Assessor asserted that the value of Beaver Lake properties is driven by the size and location of the lakefront.
26. The County provided the Commission with a spreadsheet that compares the Subject Property with 10 sales of Beaver Lake properties included in the two-year look-back period. The comparison is based on the following factors: (1) assessed value; (2) sale price; (3) assessed to sales ratio; (4) sale date; (5) area; (6) assessed value per square foot; (7) assessed value per lakefront foot; (8) sale value per square foot; (9) sale value per lakefront foot; (10) designation of general orientation of the property in relation to Beaver Lake; and (11) Cove designation. The County Assessor asserted that the spreadsheet illustrated the range of sales in comparison to the Subject Property.
27. The Commission notes that the spreadsheet generally supports the County Assessor's assertion that the most important factors driving the value of properties by Beaver Lake were the size and location of the lakefront associated with the real property. The Commission also notes the sale price per square foot of lakefront property for the Subject Property is significantly less than the other listed properties. Without more information concerning the properties listed, however, the Commission is unable to find significant probative value regarding the spreadsheet.
28. The County Assessor also provided property records cards for the Subject Property and its two neighboring properties, aerial photos of selected properties, and listings for several properties available for sale at Beaver Lake as of the date of the hearing in June of 2012. The County Assessor asserted that the listings indicated that the actual value of the Subject Property was greater than the sales price.
29. The Commission finds that the property records cards for the two neighboring properties illustrate uniformity in valuation, but that the examination of assessed values to determine the actual value of a property is not a commonly accepted mass appraisal technique. The Commission also notes that the two neighbor properties are improved with residences, unlike the Subject Property.
30. Further, while listings may be used to evaluate assessed values determined by commonly accepted mass appraisal techniques,¹⁰ the listings provided by the County Assessor were nearly 1.5 years after the date of assessment on January 1, 2011, and are therefore given little weight.¹¹

¹⁰ *Property Assessment Valuation, 3rd Ed.*, International Association of Assessing Officers (2010), at p. 481.

¹¹ The Taxpayer asserted that the County's current listings submitted at the hearing did not have merit for actual value purposes because: (1) none are comparable to the Subject Property; and (2) June 2012 listings reflect an improved economy in comparison to the assessment date of January 1, 2011.

31. The Commission notes that the property record card for one of the Subject Property's neighbors (parcel number 130083321) indicates that the land component sold for \$73,000 in 2005 when the real market was fueled by a favorable lending environment that led to the economic crisis in 2007. The Commission also notes that the property record card for the Subject Property's other neighbor (parcel number 130083429) indicates that the land component sold for \$60,000 in 1999. Thus, particularly after a lengthy marketing process, the purchase of the Subject Property for \$55,000 in May 2010 does not appear to reflect a price less than actual value under post-crisis market conditions.
32. In determining whether the Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions, the Commission is mindful that "[s]ale price is not synonymous with actual value or fair market value."¹² The Commission is also mindful, however, that where the evidence indicates that the sale of the property was an arm's length transaction, the sale price should be given strong consideration.¹³ The Commission also notes that the Nebraska Supreme Court recently upheld a ruling issued by the Lancaster County Court that the \$113,000 purchase price of property sold at an estate auction in a weak economy after the decedent's death in 2008 was the best evidence of value for inheritance tax purposes.¹⁴
33. The County Assessor did not dispute that the Taxpayer's purchase of the Subject Property involved an arm's length transaction, and he indicated that Beaver Lake sales were adversely affected by the economic crisis. He also stated that he has been unable to ascertain a logical pattern regarding sale prices of Beaver Lake properties over a period of six years. Therefore, based on the Taxpayer's testimony regarding the protracted marketing of the Subject Property in the aftermath of the economic crisis, which is supported by the Alberts letter referenced previously, the Commission finds that the May 2010 purchase price in the amount of \$55,000 stemmed from an arm's length transaction and is the best evidence of value in this case.¹⁵
34. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
35. The Taxpayer has 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 vacated and reversed.

¹² *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637 (1998).

¹³ *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982).

¹⁴ *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, 281 Neb. 122, 794 N.W.2d 406 (Neb. 2011)

¹⁵ The Property Record Card indicates that the Subject Property sold for \$44,500 in 2003 and for \$43,000 in 2000. Given the onset of the economic crisis in 2007, a \$55,000 purchase price in 2010 does not appear to be out of the ordinary.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Cass County Board of Equalization determining the value of the Subject Property for tax year 2011 is vacated and reversed.
2. That the Taxable value of the Subject Property for tax year 2011 is:

Land	\$54,790
<u>Improvements</u>	<u>\$ 210</u>
Total	\$55,000

3. This decision and order, if no further action is taken, shall be certified to the Cass County Treasurer and the Cass 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 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 on October 16, 2013.

Signed and Sealed: October 16, 2013.

Thomas D. Freimuth, Commissioner