

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Traci J. Timm-Larson,
Appellant,

v.

Hall County Board of Equalization,
Appellee.

Case Nos: 13C 049, 13C 050, 13C 051,
13C 052, 13C 053, 13C 054, 13C 055,
13C 056, 13C 057, 13C 058, 13C 059,
13C 060, 13C 061, 13C 062, 13C 063,
13C 064, 13C 065, 13C 066, 13C 067,
13C 068, 13C 069, 13C 070, 13C 071,
13C 072, 13C 073, 13C 074, 13C 075, &
13C 076

Decision and Order Affirming the Decisions
of the Hall County Board of Equalization

Procedural Background

1. The Subject Property (Subject Property) consists of 28 adjacent, vacant, unimproved parcels located in the city of Grand Island, Hall County, Nebraska. The legal descriptions of the parcels are found in the Case Files.
2. The Hall County Assessor (the Assessor) assessed 18 of the parcels associated with above captioned appeals at \$20,958 for tax year 2013.¹
3. The Taxpayer protested these values to the County Board and requested an assessed value of \$9,057 for tax year 2013 for each of these 18 parcels.
4. The County Board determined that the taxable value of each of these 18 parcels was \$14,970 for tax year 2013.
5. The Assessor assessed 6 of the parcels associated with above captioned appeals at \$9,828 for tax year 2013.²
6. The Taxpayer protested these values to the County Board and requested an assessed value of \$4,248 for tax year 2013 for each of these 6 parcels.
7. The County Board determined that the taxable value of each of these 6 parcels was \$7,021 for tax year 2013.
8. The Assessor assessed the parcel in 13C 065 at \$60,463 for tax year 2013.³

¹ These appeals and legal descriptions are: (1) 13C 049, Lot 1 Blk 1; (2) 13C 050, Lot 1 Blk 2; (3) 13C 051, Lot 2 Blk 1; (4) 13C 052, Lot 2 Blk 2; (5) 13C 053, Lot 3 Blk 1; (6) 13C 054, Lot 3 Blk 2; (7) 13C 055, Lot 4 Blk 1; (8) 13C 056, Lot 4 Blk 2; (9) 13C 057, Lot 5 Blk 1; (10) 13C 064, Lot 8 Blk 2; (11) 13C 066, Lot 9 Blk 2; (12) 13C 067, Lot 10 Blk 1; (13) 13C 068, Lot 10 Blk 2; (14) 13C 069, Lot 11 Blk 1; (15) 13C 070, Lot 11 Blk 2; (16) 13C 071, Lot 12 Blk 1; (17) 13C 072, Lot 12 Blk 2; and (18) 13C 073, Lot 13 Blk 1.

² These appeals and legal descriptions are: (1) 13C 058, Lot 5 Blk 2; (2) 13C 059, Lot 6 Blk 1; (3) 13C 060, Lot 6 Blk 2; (4) 13C 061, Lot 7 Blk 1; (5) 13C 062, Lot 7 Blk 2; and (6) 13C 063, Lot 8 Blk 1.

³ The legal description of this parcel is Lot 9 Blk 1.

9. The Taxpayer protested this value to the County Board and requested an assessed value of \$26,131 for tax year 2013.
10. The County Board determined that the taxable value of the parcel in 13C 065 was \$43,188 for tax year 2013.
11. The Assessor assessed the parcel in 13C 074 at \$374,658 for tax year 2013.⁴
12. The Taxpayer protested this value to the County Board and requested the parcel in 13C 074 should not be taxed for tax year 2013.
13. The County Board determined that the taxable value of the parcel in 13C 074 was \$267,613 for tax year 2013.
14. The Assessor assessed the parcel in 13C 075 at \$103,190 for tax year 2013.⁵
15. The Taxpayer protested this value to the County Board and requested the parcel in 13C 075 should not be taxed for tax year 2013.
16. The County Board determined that the taxable value of the parcel in 13C 075 was \$73,707 for tax year 2013.
17. The Assessor assessed the parcel in 13C 076 at \$387,530 for tax year 2013.⁶
18. The Taxpayer protested this value to the County Board and requested the parcel in 13C 076 should not be taxed for tax year 2013.
19. The County Board determined that the taxable value of the parcel in 13C 076 was \$276,807 for tax year 2013.
20. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
21. A Single Commissioner hearing was held on June 23, 2014, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
22. William Timm was present at the hearing on behalf of Traci J. Timm-Larson (the Taxpayer).
23. Jack Zitterkopf, Deputy Hall County Attorney, and Janet Pelland, Hall County Assessor, were present for the County Board.

Applicable Law

24. The Commission's review of the determination of the County Board of Equalization is de novo.⁷
25. 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

⁴ The legal description of this parcel is Outlot A, Blk 1.

⁵ The legal description of this parcel is Outlot B, Blk 1.

⁶ The legal description of this parcel is Outlot C, Blk 2.

⁷ 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).

sufficient competent evidence to justify its action.”⁸ 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.”⁹

26. 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.¹⁰
27. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹¹
28. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹²
29. The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹³

Findings of Fact and Conclusions of Law

30. In its submitted evidence, the Taxpayer generally asserted that the parcels in appeals 13C 074, 13C 075, and 13C 076 should not be taxed because they were not taxed in previous years. The Taxpayer did not provide any explanation as to why it would be legally permissible to not tax the real property associated with these parcels.
31. The Commission finds that the argument that the parcels in appeals 13C 074, 13C 075, and 13C 076 should not be taxed is unpersuasive.
32. The Taxpayer also asserted that the land value of all of the parcels was overvalued in all of the above-captioned appeals. No other issue was asserted before the Commission.
33. An appraisal report prepared September 7, 2012, indicating the value of 25 lots of undeveloped property including the 25 lots included in 13C 049 through 13C 073 was provided by the Taxpayer. The appraisal concluded that the 13.5 acres of undeveloped lots had an actual value of \$575,000 as of September 7, 2012. This equates to a value of \$.98 per square foot.¹⁴
34. The appraisal relied upon four sales to determine the actual value of the Subject Property. Of these sales, Comparable Sale 2 and Comparable Sale 3 occurred outside of the Subject Property’s taxing jurisdiction, in other counties, at distances of approximately 50 to 80

⁸ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁹ *Id.*

¹⁰ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

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

¹² 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).

¹³ Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

¹⁴ 13.5 acres x 43,560 sq. ft. = 588,060 sq. ft. of total area. \$575,000 actual value / 588,060 sq. ft. = \$.98 per sq. ft.

miles from the Subject Property.¹⁵ The September 7, 2012 appraisal did not make any adjustments for these significant differences in location.¹⁶ The Commission finds that these sales are not comparable to the Subject Property because of their location and are not reliable indicators of the actual value of the Subject Property without appropriate adjustments.

35. At the hearing, the County Board asserted that Comparable Sale 4 in the September 7, 2012 appraisal, a sale from John Niedfeldt to Jerry Slusky,¹⁷ was not an arm's length transaction and that it should not be used for purposes of determining the actual value of the Subject Property.
36. The County Board also submitted a Compensation Estimate performed for the City of Grand Island, Nebraska, on December 1, 2012. The purpose of the Compensation Estimate was to derive the value of land located on a parcel contiguous to the Subject Property desired by the City of Grand Island for the development of a new recreational trail. The appraiser first developed a determination of the actual value of a square foot of land before determining the necessary compensation for the City's proposed easement.
37. The Compensation Estimate also examined as Land Sale No. 1 the sale from Niedfeldt to Slusky. The Compensation Estimate states, "As part of the purchase agreement, the seller will be doing part of the grading work for the proposed construction."¹⁸ Sales between two individuals involved in a business association are not generally considered arm's length transactions.¹⁹
38. The Commission finds that it was appropriate to deem the sale from Niedfeldt to Slusky as not being an arm's length transaction, and the sale, therefore, should not be given weight in determining the actual value of the Subject Property.
39. Having determined that the September 7, 2012 appraisal relied on inappropriate sales to determine the actual value of the Subject Property, the Commission gives the September 7, 2012 appraisal little probative weight.
40. For completeness, the Commission notes that the Compensation Estimate also relied in part on the non-arm's length sale between Niedfeldt and Slusky.²⁰ The Commission also notes that the Compensation Estimate contains unexplained inconsistencies between its derived unit value of \$1.40 per square foot, and its calculation which assigned a unit value of \$.90 per square foot.²¹
41. The Commission also finds that three remaining qualified and comparable sales, Comparable Sale 1 from the September 7, 2012 appraisal, and Land Sales No. 2 & 3 from

¹⁵ See, September 7, 2012 Appraisal Report, pg. 29.

¹⁶ See, September 7, 2012 Appraisal Report, pg. 33.

¹⁷ See, September 7, 2012 Appraisal Report, pg. 28.

¹⁸ See, Compensation Estimate, pg. 2.

¹⁹ See, International Association of Assessing Officers, *Mass Appraisal of Real Property*, at 53-54 (1999).

²⁰ See, Compensation Estimate, pg. 2.

²¹ See, Compensation Estimate, pg. 10-11.

the compensation report, resulted in a range of indicated actual value per square foot from \$1.31 to \$1.45.²²

42. The Commission notes that the County Board set the Subject Property's land value at \$1.49 per square foot, an amount similar to the indicated range.
43. The County Board asserted that it was appropriate to value the Subject Property at an amount higher than Land Sale No. 3, because the Subject Property was superior due to currently existing infrastructure associated with an abutting completed apartment complex.
44. The Taxpayer did not produce competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
45. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determinations of the County Board were arbitrary or unreasonable and the decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The decisions of the Hall County Board of Equalization determining the taxable value of the Subject Property for tax year 2013, are Affirmed.
2. The taxable value of the Subject Property for tax year 2013 is \$14,970 for 13C 049, 13C 050, 13C 051, 13C 052, 13C 053, 13C 054, 13C 055, 13C 056, 13C 057, 13C 064, 13C 066, 13C 067, 13C 068, 13C 069, 13C 070, 13C 071, 13C 072, and 13C 073.
3. The taxable value of the Subject Property for tax year 2013 is \$7,021 for 13C 058, 13C 059, 13C 060, 13C 061, 13C 062, and 13C 063.
4. The taxable value of the Subject Property for tax year 2013 is \$26,131 for 13C 065.
5. The taxable value of the Subject Property for tax year 2013 is \$267,613 for 13C 074.
6. The taxable value of the Subject Property for tax year 2013 is \$73,707 for 13C 075.
7. The taxable value of the Subject Property for tax year 2013 is \$276,807 for 13C 076.
8. This Decision and Order, if no further action is taken, shall be certified to the Hall County Treasurer and the Hall County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
9. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
10. Each Party is to bear its own costs in this proceeding.
11. This Decision and Order shall only be applicable to tax year 2013.

²² See, September 7, 2012 appraisal, pg. 25 (indicating a per square foot sale price of \$1.34 for Comparable Sale 1), See also, Compensation Estimate, pg. 10 (indicating a per square foot sale price of \$1.31 for Land Sale No. 2 and a per square foot sale price of \$1.45 for Land Sale No. 3).

12. This Decision and Order is effective on July 11, 2014.

Signed and Sealed: July 11, 2014

Robert W. Hotz, Commissioner