

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Zimmerman Investments, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 10C 077 & 11C 358

Decision and Order Affirming the Douglas
County Board of Equalization

For the Appellant:

Doyle Zimmerman,
Chairman, Zimmerman Investments, LLC

For the Appellee:

Malina M. Dobson,
Deputy Douglas County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel located in Douglas County. The parcel is improved with a 3,853 square foot office building associated with an automotive sales operation. The legal description of the parcel is found at Exhibit 3, page 5. The property record card for the Subject Property for tax year 2010 is found at Exhibit 3. The property record card for the Subject Property for tax year 2011 is found at Exhibit 4.

II. PROCEDURAL HISTORY

The Douglas County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$413,800 for tax year 2010. Zimmerman Investments, LLC (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board). The County Board determined that the taxable value for tax year 2010 was \$413,800.¹

The Assessor determined that the assessed value of the Subject Property was \$413,800 for tax year 2011. The Taxpayer protested this assessment to the County Board. The County Board determined that the assessed value for tax year 2011 was \$413,800.²

¹ E1.

² E2.

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the consolidated hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The Commission held a hearing on May 23, 2014.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.³ 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."⁴

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.⁵

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.⁶ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁸ The County Board need not

³ 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).

⁴ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁵ *Id.*

⁶ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁸ 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).

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.⁹

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.”¹⁰ 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.”¹¹

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.¹²

“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.”¹³ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁴ 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.¹⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁶ All taxable real property, with the exception of agricultural land and horticultural

⁹ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

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

¹¹ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

¹² Neb. Rev. Stat. §77-112 (Reissue 2009).

¹³ *Id.*

¹⁴ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁵ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁶ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

land, shall be valued at actual value for purposes of taxation.¹⁷ The County Board may appoint one or more persons as referees, with authority to make recommendations to the County Board concerning the actual value of protested properties. The referee is required to provide the County Board with written findings and recommendations, but the County Board is not required to follow the recommendations of the referee.¹⁸

B. Summary of the Evidence

Doyle Zimmerman, owner of Zimmerman Investments, LLC, testified that the Taxpayer purchased the Subject Property for \$250,000 on July 24, 2007. At the time of the purchase, the building was vacant, and had previously been used as a convenience store. In 2007, the improvement on the parcel included the building used as a convenience store and a separate building consisting of two car wash bays.

Soon after the purchase in 2007, the Taxpayer remodeled the improvements, connecting the two buildings and converting the main building into partitioned office space. The upgrades also included adding suspended ceilings, restroom remodeling with new fixtures, and painting the exterior of the building. Zimmerman testified that after the remodeling, the area of the wash bay was 1,645 square feet and the area of the rest of the building was 2,208 square feet. Zimmerman testified that the total cost of the remodeling in 2007 was \$125,900.

The Taxpayer has rented the Subject Property to another company owned by Doyle Zimmerman for use as a used car lot since some time in 2008. The car lot has the capacity to show no more than 40 cars.

The Taxpayer first asserted that the referee coordinator hired by the County Board had recommended a change in taxable value during the 2010 protest process. In the 2010 protest proceedings, the Assessor assessed the Subject Property at \$413,800.¹⁹ The referee recommended a change to \$300,000, and the referee coordinator recommended “change,” but also recommended that the Subject Property retain a taxable value of \$413,800.²⁰ The Taxpayer

¹⁷ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹⁸ See, Neb. Rev. Stat. §77-1502.01 (Reissue 2009).

¹⁹ E1.

²⁰ E3:32-33.

asserted that the “change” designation must be construed to mean that the referee coordinator agreed with the change recommended by the referee to \$300,000.

Christopher Mustoe, a certified general appraiser, testified that he was hired by the County Board as the referee coordinator for the 2010 protests, including the protest proceeding for the Subject Property. Mustoe testified that the “change” designation was written by him in June 2010. He testified his recommendation to the County Board was a taxable value of \$413,800, not \$300,000. The record reflects that the County Board followed this recommendation, which was the same value noticed by the Assessor in its assessment of the Subject Property of \$413,800.

The Commission gives little weight to the sale price of the Subject Property in 2007. Sale price may be taken into consideration when determining the actual value of real property for ad valorem tax purposes, but all relevant factors surrounding the sale must also be considered.²¹ “Sale price is not synonymous with actual value or fair market value.”²² In the present case, the sale occurred three years before the date of assessment, and the Taxpayer presented evidence that the use of the Subject Property changed significantly after the sale. There was also evidence that the improvements on the Subject Property were significantly modified, including remodeling costs after the sale in the amount of \$125,900. These changes to the Subject Property significantly affected the actual value of the Subject Property as of the date of assessment. The effect of the renovations on the Subject Property’s actual value cannot be calculated by simply adding the cost of renovations to the sale price.

The Taxpayer’s only additional argument consists of an assertion that a referee and referee coordinator for the County Board agreed that the assessed value should be changed. However, this assertion was specifically refuted by Mustoe, the referee coordinator. The referee, whose comments recommended a change to \$300,000, based his recommendation on an equalization theory.²³ The Commission discusses the Taxpayer’s equalization arguments below.

The Commission finds that there is not clear and convincing evidence that the County Board’s determination of the actual value of the Subject Property was arbitrary or unreasonable.

²¹ See, *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

²² *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

²³ E3:32-33.

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.”²⁴ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁵ 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.²⁶ 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.²⁷ 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.²⁸ 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.²⁹ The constitutional requirement of uniformity in taxation extends to both rate and valuation.³⁰ 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].”³¹ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”³²

B. Summary of the Evidence

²⁴ *Neb. Const.*, Art. VIII, §1.

²⁵ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁶ *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).

²⁷ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²⁸ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁹ *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).

³⁰ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³¹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³² *Id.* at 673, 94 N.W.2d at 50.

The Taxpayer first identified several comparable properties for purposes of seeking equalization relief. The Taxpayer asserted that the assessed values of these alleged comparable properties should be averaged to determine the actual market value of the Subject Property.

Averaging of assessed values is not an approved appraisal or assessment method, nor is it authorized under Nebraska law. Equalized relief may be based on ratios of the assessed value and the actual value of comparable properties and the Subject Property³³ or a comparison of the actual value of other properties (other than agricultural property) and the Subject Property.³⁴

The Taxpayer's comparisons did not account for the differences between the alleged comparables and the Subject Property by making appropriate adjustments. The Taxpayer's comparisons also did not account for economies of scale when comparing much larger lots and larger improvements to the Subject Property, and failed to make reasonable adjustments to compensate for these differences.

The Taxpayer also disputed the recommendations made by a referee coordinator in the protest proceedings after a referee for the County Board recommended a change to the assessed value of the Subject Property based upon an equalization theory.³⁵ However, in the evidence in this de novo proceeding, the evidence contains no property (as shown by the property record cards) that is directly comparable to the Subject Property and has been assessed more favorably than the Subject Property.

VI. 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.

VII. ORDER

³³ See generally, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 588 N.W.2d 190 (1999).

³⁴ See generally, *Krings v. Garfield County Board of Equalization*, 286 Neb. 352, 835 N.E.2d 750 (2013).

³⁵ E3:32-33.

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the value of the Subject Property for tax years 2010 and 2011 are affirmed.
2. The assessed value of the Subject Property for tax years 2010 and 2011 is \$413,800.
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 June 13, 2014.

Signed and Sealed: June 13, 2014

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.) and other provisions of Nebraska Statutes and Court Rules.