

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Steven J. & Katherine L. Mercure,  
Appellant,

v.

Johnson County Board of Equalization,  
Appellee.

Case No: 13C 101

Decision and Order Affirming  
The Determination of the Johnson County  
Board of Equalization

**Procedural Background**

1. A Single Commissioner hearing was held on February 27, 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.
2. Steven J. Mercure (the Taxpayer) was present at the hearing. William E. Peters was also present at the hearing for the Taxpayer.
3. Rick Smith, Deputy Johnson County Attorney, was present at the hearing for the Johnson County Board of Equalization (the County Board). The Johnson County Assessor (the Assessor), Karen Koehler, was also present at the hearing.
4. The Subject Property (Subject Property) includes a 3,374 square foot commercial building, located at 151 S. 3<sup>rd</sup> Street, Tecumseh, Johnson County, Nebraska. The legal description of the Subject Property is found in the Case File.
5. The Assessor assessed the Subject Property at \$37,070 for tax year 2013.
6. The Taxpayer protested this value to the County Board and requested a taxable value of \$17,350 for tax year 2013.
7. The County Board determined that the taxable value of the Subject Property was \$29,790 for tax year 2013.
8. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).

**Applicable Law**

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

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<sup>1</sup> 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.”<sup>2</sup>

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.”<sup>3</sup> 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.”<sup>4</sup>
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.<sup>5</sup>
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>

#### Findings of Fact

14. The Subject Property was sold on May 3, 2009, to a private organization known as Tecumseh Historic Square (THS) for \$33,000. THS sold the Subject Property to the City of Tecumseh (the City) on December 27, 2011, for an unknown amount.<sup>8</sup> Mercure stated the amount was \$0. Mercure stated that he had been actively involved in the activities of THS during all of the relevant times.
15. The City then sold the Subject Property to the Taxpayer on June 15, 2012, for \$8,000, less than seven months prior to the assessment date for the 2013 tax year.<sup>9</sup>
16. Mercure asserted that the sale price of \$33,000 was inflated, due to the City’s desire to control the condition of the property.
17. Mercure also asserted that the \$8,000 price was indicative of the market value of the Subject Property. He stated, however, that the City had not placed the property on the

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

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

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

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

<sup>7</sup> 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).

<sup>8</sup> The sales price is blank on the Property Record Card.

<sup>9</sup> *Id.*

open market, but, rather, the City privately approached him about purchasing the property because of his involvement with THS.<sup>10</sup>

18. Based upon all of the information reviewed, the Commission concludes that the \$8,000 sale price on June 15, 2012, was not indicative of the actual value of the Subject Property.
19. The Taxpayer asserted that the sale of another commercial property on the same town square was indicative of the market value of the Subject Property.<sup>11</sup> The parcel, including a 3,054 square foot commercial building, sold for \$9,000 on November 15, 2013, more than 11 months after the tax year 2013 assessment date. The parcel was assessed with similar physical depreciation adjustments and the same economic depreciation adjustment as the Subject Property. There was insufficient information provided for the Commission to conclude that the sale price of \$9,000 was indicative of the market value of the Subject Property.
20. The Taxpayer asserted that the poor condition of certain components of the Subject Property should have resulted in a lower taxable value as of January 1, 2013. In particular, the Taxpayer indicated that the roof had leaks, the ceiling of the second floor was falling in, and the apartment on the second floor was uninhabitable.<sup>12</sup> Additionally, Mercure testified that the Subject Property was located on the town square of Tecumseh and that many of the properties on the town square were vacant or were in poor condition. However, the Taxpayer did not offer documents or statements to quantify the economic depreciation that may result from such circumstances.
21. The Subject Property was assessed by the Assessor using the Cost Approach.<sup>13</sup>
22. At the protest hearing, the County Board accounted for the Taxpayer's assertions regarding the condition of the Subject Property by increasing the percentage deductions for physical depreciation in the Assessor's cost approach. As a result of the County Board's actions raising the depreciation deductions, the cost approach indicated a value of \$29,790.

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<sup>10</sup> 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 ordinary course of trade. See Neb. Rev. Stat. §77-112. *Cabela's, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999).

<sup>11</sup> “[A] single sale may in some instances provide evidence of market value. We have recognized that in tax valuation cases, actual value is largely a matter of opinion and without a precise yardstick for determination with complete accuracy. A single sale should not be excluded merely because it is a single sale. Rather, the fact that evidence of other sales is not presented goes to the weight of the evidence.” *Firethorn Inv. v. Lancaster County Bd. of Equalization*, 261 Neb. 231, 240, 622 N.W.2d 605, 611 (2001).

<sup>12</sup> See Case File.

<sup>13</sup> “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.” Neb. Rev. Stat. §77-112 (Reissue 2009). The cost approach includes six steps: “(1) Estimate the land (site) value as if vacant and available for development to its highest and best use; (2) Estimate the total cost new of the improvements as of the appraisal date, including direct costs, indirect costs, and entrepreneurial profit from market analysis; (3) Estimate the total amount of accrued depreciation attributable to physical deterioration, functional obsolescence, and external (economic) obsolescence; (5) Subtract the total amount of accrued depreciation from the total cost new of the primary improvements to arrive at the depreciated cost of improvements; (5) Estimate the total cost new of any accessory improvements and site improvements, then estimate and deduct all accrued depreciation from the total cost new of these improvements; (6) Add site value to the depreciated cost of the primary improvements, accessory improvements, and site improvements, to arrive at a value indication by the cost approach.” International Association of Assessing Officers, *Property Assessment Valuation*, at 230 (3rd ed. 2010).

23. The County Board did not increase the deduction for economic depreciation.
24. The Taxpayer failed to quantify any increased deduction for economic depreciation.
25. Mercure opined that the Subject Property would likely not sell for more than \$17,000 to \$20,000.<sup>14</sup> The Taxpayer failed to provide a persuasive basis for this opinion.

#### Conclusions of Law

26. 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.
27. 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 Johnson County Board of Equalization determining the taxable value of the Subject Property for tax year 2013, is Affirmed.
2. The taxable value of the Subject Property for tax year 2013 is \$29,790.
3. This Decision and Order, if no further action is taken, shall be certified to the Johnson County Treasurer and the Johnson 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 2013.
7. This Decision and Order is effective on March 3, 2014.

Signed and Sealed: March 3, 2014.

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Robert W. Hotz, Commissioner

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<sup>14</sup> An owner who is familiar with his property and knows its worth is permitted to testify as to its value. *U. S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).