

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Lloyd L. McIntyre,
Appellant,

v.

Adams County Board of Equalization,
Appellee.

Case No: 14R 003

Decision and Order Reversing the
Determination of the Adams
County Board of Equalization

1. A Single Commissioner hearing was opened on February 18, 2015 at the Commission’s Hearing Room, 6th Floor, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Salmon. The hearing was recessed for an interior and exterior inspection. The Hearing was concluded at the Adams County Courthouse 500 West 4th, Hastings, Nebraska, on April 3, 2015.
2. Lloyd L. McIntyre (the Taxpayer) was present at the hearing.
3. David A. Bergin was present for the Adams County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is a residential parcel improved with a 1,984 square foot single family dwelling, with a legal description of: Pt NE ¼ SE ¼ NW1/4 Tax Lot 6 City Extension Sec 13-7-10, Hastings, Adams County, Nebraska.

Background

5. The Adams County Assessor (the Assessor) assessed the Subject Property at \$85,700 for tax year 2014.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$80,000 for tax year 2014.
7. The County Board determined that the taxable value of the Subject Property was \$120,000 for tax year 2014.
8. The Taxpayer appealed the determination of the County Board 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

¹ See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

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 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 Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸
15. The Taxpayer purchased the Subject Property on January 29, 2014, for \$120,000.
16. The Taxpayer asserted the Subject Property was not equalized with similar parcels in the neighborhood. He provided property cards for several properties that sold in 2014 and asserted their assessed value was much lower than the sale price. He asserted that the actual value of the Subject Property should be \$108,000, similar to a comparable property.
17. The Taxpayer also asserted that market value and assessed value are not the same thing.
18. The Taxpayer received notice from the County Assessor in June 2014 for an assessed value of \$85,700. The County Assessor stated that the improvement value on the Subject Parcel had been increased by 4 Percent like all the other improvements in the Subject Property’s Neighborhood for January 1, 2014. The County Assessor, who took office January 2015, indicated that the Subject Property’s market area had not been reassessed in a decade.

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) (2014 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).

⁸ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

19. The County Board of Equalization increased the County Assessor's valuation to the purchase price of \$120,000.
20. Real property in Nebraska is required to be assessed at its actual value. Nebraska law defines actual value:
- 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."⁹
21. Taxable value and assessed value are defined by Nebraska Statutes as having the same meaning.¹⁰ The assessed value of a residential parcel of real property is its actual value.¹¹ Contrary to the Taxpayer's assertion, the Subject Property's taxable value, assessed value, and actual value are the same.¹²
22. The Nebraska Supreme Court has consistently held that sales price is not synonymous with actual value.¹³ Nebraska Statutes permit the County Assessor to value the Subject Property using the sales comparison approach, cost approach, income approach, or any commonly accepted mass appraisal technique and define actual value.¹⁴
23. The common law only requires that the Commission give the purchase price strong consideration.¹⁵ An arm's length transaction is not conclusive of the actual value of the Subject Property.¹⁶ When giving the sale consideration, the Commission may assign weight to the sale based upon the other evidence presented.¹⁷ The mere fact that only a single sale is presented as evidence of actual value may be given weight by the trier of fact.¹⁸ Given the current statutory scheme, which defines actual value as "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 willing seller, both of whom are knowledgeable concerning all the uses to which the real

⁹ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁰ See, Neb. Rev. Stat. §77-131 (Reissue 2009).

¹¹ See, Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹² See, Neb. Rev. Stat. §77-131 (Reissue 2009) and Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹³ *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); *Dowd v. Board of Equalization*, 240 Neb. 437, 482 N.W.2d 583 (1992); *Collier v. County of Logan*, 169 Neb. 1, 8, 97 N.W.2d 879, 885 (1959); *Novak v. Board of Equalization*, 145 Neb. 664, 666, 17 N.W.2d 882, 883 (1945).

¹⁴ Neb. Rev. Stat. § 77-112 (Reissue 2009).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Firethorn Inv. v. Lancaster County Bd. of Equalization*, 261 Neb. 231, 240, 622 N.W.2d 605, 611 (2001)(Citations Omitted) ("Rather, the fact that evidence of other sales is not presented goes to the weight of the evidence.").

property is adapted and for which the real property is capable of being used[.]”¹⁹ the Commission concurs with the Nebraska Court of Appeals in *Cabela’s Inc.*, “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.”²⁰ The Commission finds this interpretation harmonious with current common law and statute.

24. In analyzing the sale of the Subject Property in January 14, 2014, the Commission gives the sale price strong consideration. However, as previously stated the Commission is mindful that sale price, even sale price from an arm’s length transaction, is not always equal to actual value.
25. The Commission finds that the Taxpayer’s assertion that the actual value of the Subject Property should be equal to the sale price of a comparable is not clear and convincing evidence that the County Board’s determination is unreasonable or arbitrary.
26. However, the County Board’s contention that the actual value of the Subject Property is equal to its sale price has violated the Nebraska Constitutional principal of uniformity and equalization.
27. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²¹ 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.²² 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.²³ 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.²⁴
28. 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].”²⁵
29. The Nebraska Court of Appeals has held that is it a failure of a plain duty for the County Board to assign a value to a subject property which is excessive compared to other properties.²⁶
30. The Commission finds that this has occurred in this case. The County Board’s decision implies that the County Assessor’s model produced assessed values that were well below

¹⁹ Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁰ *Cabela’s Inc. v. Cheyenne County Bd. Of Equalization*, 8 Neb.App. 582, 591, 597 N.W.2d 623, 632 (1999) (citations omitted).

²¹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²² *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).

²³ *Cabela’s Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²⁴ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁵ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁶ *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 (2008).

the actual value for residential properties. This is supported by the Taxpayer's residential sales which are assessed well below sale price. Additionally, the Subject Property's market area has not been reassessed for a decade even though Nebraska law requires the reassessment of real property at least every six years.²⁷

31. The County Board increased the assessed value of the Subject Property even though logic would indicate that the result is one property, the Subject Property, is then assessed at a greater percentage of actual value than other properties. Raising the assessed value of the Subject Property to sale price based solely on the sale price but not raising the assessed values of other properties within the same class and market area to market value, is unreasonable and arbitrary.²⁸
32. Other properties in the Subject Property's market area are benefitting from an assessed value that is below market. This includes other properties that have sold for more than their assessed value, but have not had their assessed values increased.
33. The Commission notes that it would also be inappropriate to only raise the assessed value of all the properties that have sold. Instead, the County Assessor is required and should properly use the sales to reassess the market area. Without reassessing all properties in the market area, and having determined that the other properties in the Subject Property are currently assessed below actual value, it was unreasonable for the County Board to increase the assessed value of the Subject Property.
34. Based on the foregoing the Commission finds that the Subject Property's assessed value should be that \$85,700 as produced from the County Assessor's model which assigns the same benefit to the Subject Property as other comparable properties and results in uniformity.
35. 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.
36. 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.
37. The Taxpayer has adduced clear and convincing evidence that the assessed value of the Subject Property as determined by the County Board when compared with valuations placed on similar property is grossly excessive and is the result failure of a plain legal duty.

²⁷ See, Neb. Rev. Stat. §77-1311.03 (2014 Cum. Supp.).

²⁸ See generally, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

ORDER

IT IS ORDERED THAT:

1. The Decision of the Adams County Board of Equalization determining the taxable value of the Subject Property for tax year 2014, is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2014 is:

Land	\$ 10,250
<u>Improvements</u>	<u>\$ 75,450</u>
Total	\$ 85,700

3. This Decision and Order, if no further action is taken, shall be certified to the Adams County Treasurer and the Adams County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 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 2014.
7. This Decision and Order is effective on April 15, 2015.

Signed and Sealed: April 15, 2015

Nancy J. Salmon, Commissioner