

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bellamini Prop., LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee,

Case No: 12C 774

Decision and Order Affirming County
Board of Equalization

For the Appellant:

Michael Walz, Member, Bellamini Prop., LLC,
Pro Se.

For the Appellee:

Jimmie L. Pinkham III, Deputy
Douglas County Attorney.

This appeal was heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is improved with a 2,871 sq. ft. duplex located at 629 South 19th Street, Omaha, Douglas County, Nebraska. The Property Record File (“PRF”) and legal description of the parcel are found at Exhibit 5.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the Subject Property was \$118,500 for tax year 2012.¹ Bellamini Prop., LLC (herein referred to as the “Taxpayer”) protested this assessment to the Douglas County Board of Equalization (herein referred to as the “County Board”) and requested an assessed valuation of \$90,000.² The County Board determined that the taxable value for tax year 2012 was \$101,300.³

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (herein referred to as “Commission”). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The Commission held a hearing on March 3, 2015.

¹ E5:12.

² E5:32.

³ E2 and E5:12.

A majority of the Commission constitutes a quorum sufficient to transact business.⁴ The Commission must deny relief “in any hearing or proceeding unless a majority of the Commissioners present determine that the relief should be granted.”⁵ A majority is defined as, “The greater number. The number greater than half of any total.”⁶ Commissioner Freimuth and Commissioner Salmon were present at the hearing and constituted a majority of the Commission, and, therefore, a quorum sufficient to transact business. A majority of the Commission has determined that relief should not be granted. The determination of the County Board is affirmed.

III. STANDARD OF REVIEW

The Commission’s review of the determination by a County Board of Equalization is de novo.⁷ 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.”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

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 Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹¹

⁴ See, Neb. Rev. Stat. §77-5005(2) (2014 Cum. Supp.).

⁵ See, Neb. Rev. Stat. §77-5016(13) (2014 Cum. Supp.).

⁶ *Black’s Law Dictionary 6th Edition*, West Group, p. 955 (1990).

⁷ 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). “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).

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) (2014 Cum. Supp.).

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

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 The County Board need not 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.¹³

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.”¹⁴ 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.”¹⁵ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁶

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.¹⁷

“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.”¹⁸ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁹ Taxable value is the percentage of actual value

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

¹⁴ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

¹⁵ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

¹⁶ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹⁷ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁸ *Id.*

¹⁹ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.²⁰ All real property in Nebraska subject to taxation shall be assessed as of January 1.²¹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²²

B. Summary of the Valuation Evidence

Michael Walz, a Member of Bellamini Prop., LLC, the Taxpayer, testified at the hearing before the Commission. The Taxpayer did not offer an appraisal of the Subject Property or other documentary evidence at the hearing. Mr. Walz asserted that the Subject Property should be valued at \$90,000 for tax year 2012. In support of this valuation, Mr. Walz asserted that the parcel immediately adjacent to the Subject Property was assessed at \$90,000 for tax year 2012.

Other than cross examination of Mr. Walz, the County Board did not elicit witness testimony at the hearing before the Commission. The “Assessment Report” found at Exhibit 5 indicates that the County Assessor’s \$118,500 (Land: \$6,000; Improvement: \$112,500) notice value for tax year 2012 attributable to the Subject Property’s improvement component is based on a sales comparison approach mass appraisal model derived from market area arm’s-length sales and multiple regression analysis.²³ Multiple regression analysis assigns value to physical and locational characteristics of real property based on correlation of such characteristics with market area sales.²⁴ The Assessment Report contains a document entitled “Market Calculation Detail” that sets forth the value of each of the various mass appraisal model characteristics assigned to the Subject Property’s improvement component.²⁵

The Assessment Report contains County Board Referee notes indicating that the Referee recommended a reduction of valuation of the Subject Property from \$118,500 to \$101,300 based on a review of a comparable submitted by the Taxpayer located at 631 South 19th Avenue.²⁶ The County Board adopted this \$101,300 recommendation for tax year 2012.²⁷

²⁰ Neb. Rev. Stat. §77-131 (Reissue 2009).

²¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

²² Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²³ See, E5:6 and E5:11.

²⁴ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 416, 427.

²⁵ E5:11.

²⁶ E5:34-35. The Commission notes that the Taxpayer asserted that the Subject Property should be valued at \$90,000 for tax year 2012, which is the same assessment assigned to a parcel immediately adjacent thereto apparently located at 631 South 19th Street. The Commission also notes that the County Board’s Referee refers to equalization with the parcel located at 631 South 19th Avenue, which the Taxpayer testified is approximately one block from the Subject Property located at 631 South 19th Street.

²⁷ E2 and E5:12.

C. Valuation Analysis

The Taxpayer's opinion of value based on the use of the assessed value the parcel immediately adjacent to the Subject Property can best be described as an attempted sales comparison approach. An opinion of value under the sales comparison approach is developed by analyzing closed sales, listings, or pending sales of properties that are similar to the subject property.²⁸ An opinion of value based on use of the sales comparison approach requires use of a systematic procedure.²⁹ This process requires an analysis of sales prices, not assessed values.³⁰ This approach also requires that analyzed properties must be comparable to the Subject Property, and receive adjustments for any differences.³¹

A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.³² The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.³³ The comparison of assessed values of dissimilar parcels is not recognized as an appropriate approach.

The Taxpayer did not submit a Property Record File ("PRF") for the parcel adjacent to the Subject Property, so the Commission is unable to compare the characteristics of the properties. Additionally, the Taxpayer did not use sales prices exclusively, but instead relied upon an examination of assessed values.³⁴ The Taxpayer's approach for determining the actual value of the Subject Property's improvement component does not meet the requirements of the sales comparison approach.³⁵

Based on the foregoing analysis, the Commission is unable place significant weight on the Taxpayer's \$90,000 opinion of value because it is not based on a professionally accepted appraisal approach. The Commission finds that the Taxpayer did not provide clear and

²⁸ *The Appraisal of Real Estate*, Appraisal Institute, at 297 (13th ed. 2008).

²⁹ *Id.* at 301-302.

³⁰ *Id.*

³¹ *Id.*

³² Neb. Rev. Stat. §77-112 (Reissue 2009).

³³ *Id.*

³⁴ See, *Id.*

³⁵ See, *The Appraisal of Real Estate*, Appraisal Institute, at 301-302 (13th ed. 2008).

convincing evidence that the County Board's \$101,300 determination was unreasonable or arbitrary for tax year 2012.

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."³⁶ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.³⁷ 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.³⁸ 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.³⁹ 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.⁴⁰ 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.⁴¹ The constitutional requirement of uniformity in taxation extends to both rate and valuation.⁴² 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]."⁴³ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.⁴⁴

³⁶ *Neb. Const.*, Art. VIII, §1.

³⁷ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

³⁸ *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).

³⁹ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

⁴⁰ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

⁴¹ *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).

⁴² *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

⁴³ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁴⁴ *Id.* at 673, 94 N.W.2d at 50.

“To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”⁴⁵

“Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.”⁴⁶

The County Board fails to fulfill its “plain duty” to equalize property valuations by adjudicating tax protests of comparable properties in greatly disparate amounts.⁴⁷

B. Summary of the Equalization Evidence & Analysis

As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;⁴⁸ or (2) a comparison of the ratio of assessed value to market value for the Subject Property and other real property **regardless of similarity** indicates that the Subject Property was not assessed at a uniform percentage of market value;⁴⁹ or (3) similar properties were assessed at materially different values due to misclassification of components of the Subject Property or similar components of other properties.⁵⁰

The County’s Assessment Report generally references documentation submitted by the Taxpayer for consideration at the protest level before the County Board in 2012 to support the Taxpayer’s assertion that the Subject Property parcel was not equalized with other properties in Douglas County.⁵¹ The Taxpayer, however, did not provide the Property Record Files (“PRFs”) for these alleged comparable properties. As a result, the Commission is unable to determine (1) whether the Subject Property and the alleged comparable were similarly situated; or (2) whether the assessed to actual value ratio for the Subject Property was excessive when compared with the

⁴⁵ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

⁴⁶ *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

⁴⁷ *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 (2008) (“By adjudicating tax protests in greatly disparate amounts—676 Dillon Drive at 75.8 percent of its market value and Zabawa’s comparable property at full market value—the Board failed to fulfill its ‘plain duty’ to equalize property valuations. Zabawa rebutted the presumption that the Board’s decision was correct.”).

⁴⁸ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

⁴⁹ See, *Cabela’s Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

⁵⁰ See, *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

⁵¹ E5:34-35 (the Taxpayer’s equalization documentation referenced in the County’s Assessment Report for the Subject Property parcel was not received in evidence by the Commission).

alleged comparable property; or (3) whether the Subject Property or other properties were misclassified.

Paragraph 10 of the Commission’s “Order For Hearing And Notice of Hearing” for each appeal herein requires parties to provide the Commission “[c]opies of the County’s Property Record File for any parcel a party will assert is a comparable parcel.” Additionally, the Commission notes that paragraph 10 provides that “[a] screen shot or print out of a web page is not a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.”

The Commission finds that the Taxpayer did not provide clear and convincing evidence to obtain equalization relief for tax year 2012.

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 County Board’s determination is affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Douglas County Board of Equalization determining the value of the Subject Property for tax year 2012 is affirmed.⁵²
2. The assessed value of the Subject Property for tax year 2012 is:

Land	\$ 6,000
Improvements	<u>\$ 95,300</u>
Total	\$101,300

⁵² Assessed value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

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 (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 2012.
7. This decision and order is effective for purposes of appeal on May 8, 2015.

Signed and Sealed: May 8, 2015.

Thomas D. Freimuth, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.