

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Rick J. Malander,
Appellant,

Case No: 15R 0072

v.

Decision and Order Reversing Nance
County Board of Equalization

Nance County Board of Equalization,
Appellee.

Background

1. The Subject Property is rural residential parcel improved with a 4,027 square foot single family, 1½ story dwelling, with a legal description of: Pt of SW ¼ 6-17-6 11.01 Acres, Nance County, Nebraska.
2. The Nance County Assessor (the County Assessor) assessed the Subject Property at \$678,320 for tax year 2015.
3. The Taxpayer protested this value to the Nance County Board of Equalization (the County Board) and requested an assessed value of \$472,030 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$636,505 for tax year 2015.¹
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on June 16, 2016, at Rivers Edge Convention Center, 265 33rd Avenue, Columbus, Nebraska before Commissioner Nancy J. Salmon.
7. Rick J. Malander was present at the hearing for the Taxpayer.
8. Megan Zoucha, Nance County Assessor, was present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.²
10. The Commission’s review of the determination of the County Board of Equalization is de novo.³
11. 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

¹ It should be noted that it appears that the Decision of the Board of Equalization contains a mathematical error as the total of the land and building valuations is \$646,505.

² See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

³ 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).

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

12. 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
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷
14. 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
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁹

Findings of Fact & Conclusions of Law

16. The Subject Property is located in rural Nance County near the village of Belgrade, Nebraska. The Taxpayer asserts that because the Subject Property is not located near a larger city or town, its market value must be reduced. He provided the Commission with an appraisal which is more particularly discussed below in paragraph 17.
17. As noted above, the Taxpayer provided the Commission with an appraisal which was prepared by Scott G. Harsh, a Licensed Real Estate Appraiser. Mr. Harsh was not present at the hearing so neither the parties nor the Commission were able to question him regarding his appraisal. The appraisal was prepared in December, 2014 for loan purposes. While an appraisal for these specific purposes may in fact be acceptable by the Commission, the fact that the Taxpayer was unable to provide foundational evidence as to the nature of a loan appraisal as compared to a fair market value appraisal causes the Commission some concern. The County Assessor examined the appraisal and expressed concern over the appraiser’s large percentage adjustment for the Subject Property’s location. However, neither she nor the Commission was able to address these concerns with the appraiser himself. For that reason, the Commission does not find the appraisal

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) (2014 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).

⁹ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

to be persuasive. In the event that additional foundational information were provided, the Commission may possibly consider the appraisal.

18. The Assessor stated that she uses the cost approach to value all residential property in Nance County. The Taxpayer asserted that this was not the correct approach to use as the values are higher than market value. Determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes. Neb. Rev. Stat. §77-112 (Reissue 2009). The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.
19. The Property record card was reviewed. The Taxpayer disagreed with the basement portion of the property record card. He noted that he only has a 252 square foot recreation room and no other finish as of January 1, 2015. The County Assessor was given time and agreed to correct the 2015 valuation using the correct figures. She indicated that the dwelling valuation for January 1, 2015 would be \$549,770 using the corrected square footage. The Taxpayer was also concerned because the Assessor listed a heat pump with ground loop system. The Taxpayer stated he has a pump and dump heat pump and those are less expensive to install. The Assessor was unable to quantify the difference in valuation. The Commission notes that the air to air and ground loop system are the two heat pumps listed in the Marshall & Swift manual. The Taxpayer did not quantify the difference in market value of the two systems
20. The Taxpayer provided the commission with a spreadsheet listing alleged comparable properties. He noted the dwelling value per square foot of each of the alleged comparable properties. He asked that the Subject Property be equalized to the average square foot value of the alleged comparables.
21. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁰ 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.¹¹ 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.¹² 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.¹³
22. 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

¹⁰ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹¹ *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).

¹² *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

¹³ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

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].”¹⁴

23. The alleged comparable properties provided by the Taxpayer ranged in size, basement finish, quality, age, physical characteristics, and garages. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁵ The Commission finds that the properties included in the Taxpayer’s alleged comparable properties are not truly comparable.
24. The Taxpayer also provided a spreadsheet showing sales from 3 counties and asked that the Subject Property be valued at the average cost/ square foot of the 6 sales.
25. The Taxpayer’s approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the subject property for purposes of mass appraisal. Because the method is not identified in statute, proof of its professional acceptance as an accepted appraisal approach would have to be produced. No evidence has been presented to the Commission that this approach is a professionally accepted mass or fee appraisal approach. If the approach were shown to be professionally accepted, techniques for use of the approach would have to be developed.
26. Because of the discrepancies in the square footage described in paragraph 18 above and agreed upon by the County Assessor, 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.
27. The Taxpayer has adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be reversed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2015, is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$42,030
<u>Improvements</u>	<u>\$549,770</u>
Total	\$591,800

3. This Decision and Order, if no further action is taken, shall be certified to the Nance County Treasurer and the Nance County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).

¹⁴ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹⁵ See generally, *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers (2010) at 169-79.

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 2015.
7. This Decision and Order is effective on July 1, 2016.

Signed and Sealed: July 1, 2016.

Nancy J. Salmon, Commissioner