

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

James C. Cobb,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case Nos: 14R 019 & 15R 0139

Decision and Order Affirming the Decisions
of the Sarpy County Board of Equalization

For the Appellant:

James C. Cobb,
Pro Se

For the Appellee:

John W. Reisz
Deputy Sarpy County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located at 10309 Olive Circle, in the city of LaVista, Sarpy County, Nebraska. The parcel is improved with a 2,109 square foot home, built in 2007. The legal description of the parcel is found at Exhibits 1 and 2. The property record cards for the Subject Property are found at Exhibits 3 and 4.

II. PROCEDURAL HISTORY

The Sarpy County Assessor determined that the assessed value of the Subject Property was \$382,435 for tax year 2014 and \$386,145 for tax year 2015.¹ James C. Cobb (the Taxpayer) protested these assessments to the Sarpy County Board of Equalization (the County Board) and requested valuations of \$352,203 in tax year 2014 and \$340,013 in tax year 2015. The County Board determined that the taxable value for tax year 2014 was \$382,435, and \$386,145 for tax year 2015.²

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits as ordered by the Commission. The Commission held a hearing on August 16, 2016.

¹ Exhibits 1 and 2.

² Exhibits 1 and 2.

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 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

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).

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

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 The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹²

IV. VALUATION 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.¹³

“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.”¹⁴ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁵ 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.¹⁶ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁷ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁸

V. EQUALIZATION 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

¹⁰ Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

¹¹ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

¹² Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹³ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁴ *Id.*

¹⁵ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁶ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁷ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁸ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

Constitution.”¹⁹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁰ 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.²¹ 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.²² 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.²³ 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.²⁴ The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁵ 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].”²⁶ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁷

VI. SUMMARY OF THE EVIDENCE

The County Assessor rated the Subject Property improvements at Good+ quality and average condition, based in part on an inspection made on December 14, 2010.²⁸ The inspection was completed by Chad Howser, who at the time was an employee of the County Assessor. The County Assessor utilized a cost approach to determine the actual value of the improvements.²⁹

¹⁹ *Neb. Const.*, Art. VIII, §1.

²⁰ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²¹ *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).

²² *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²³ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁴ *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).

²⁵ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²⁶ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁷ *Id.* at 673, 94 N.W.2d at 50.

²⁸ Exhibit 3:2. Exhibit 3:16.

²⁹ Exhibit 3:15-18. Exhibit 4:42-48.

For the protests filed by the Taxpayer, the County Board utilized the services of a Referee.³⁰ For both tax years 2014 and 2015 the Referee, Jeff Reynolds, a certified residential appraiser, recommended to the County Board that no change be made to the assessment made by the County Assessor. In both years, the County Board agreed with the recommendations made by the Referee.

Jeff Reynolds testified that he reviewed the cost approach assessment at the protest proceeding and considered the Taxpayer's assertions regarding actual value. Reynolds used the purchase price of the Subject Property of \$427,962 on March 28, 2007 as a "guideline" or "starting point" in his analysis. He also testified that the Taxpayer's analysis was flawed because it involved comparing the assessed values of other properties to the assessed value of the Subject Property, rather than analyzing sales of other properties.

James Cobb testified that he analyzed the assessments of multiple properties, including the assessments of each of several properties in the same cul-de-sac as the Subject Property. Cobb's analysis involved dividing the assessment amount by the number of above-ground square feet to make a comparison. Cobb's analysis did not account for the contributory value of basement square footage or of finished basement square footage. The contributory values of the basement and finished basement areas of each of the homes in the cul-de-sac varied significantly.³¹ Comparing the assessments of dissimilar properties is not an acceptable assessment method to determine actual value.³²

VII. 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 determinations. The Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For all of the reasons set forth above, the decisions of the County Board should be affirmed.

³⁰ A county board of equalization is authorized to appoint a Referee under Neb. Rev. Stat. §77-1502.01.

³¹ The combined assessed value of the replacement cost new of basement and finished basement areas included the Subject Property at 10309 Olive Circle at \$91,446, 10316 Olive Circle at \$86,374, 10303 Olive Circle at \$124,766, and 10315 Olive Circle at \$74,988. Total depreciation for these properties ranged from 13% to 15%. The total depreciation for the Subject Property was 15%. See Exhibits 4:34, 4:64, 4:72, and 7:26.

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

VIII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Sarpy County Board of Equalization determining the taxable value of the Subject Property for tax years 2014 and 2015 are affirmed.
2. The taxable value of the Subject Property for tax year 2014 is \$382,435 and for tax year 2015 is \$386,145.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer and the Sarpy 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. Witness fees of \$20.00³³ and mileage of \$80.89³⁴ for a total of \$100.89 are taxed to the Appellant and shall be made payable to witness Chad Howser.
6. Other than witness fees, each party is to bear its own costs in this proceeding
7. This Decision and Order shall only be applicable to tax years 2014 and 2015.
8. This Decision and Order is effective for purposes of appeal on October 12, 2016.³⁵

Signed and Sealed: October 12, 2016

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

³³ Neb. Rev. Stat. §77-5016(12) (2014 Cum. Supp.); Neb. Rev. Stat. §33-139 (2014 Cum. Supp).

³⁴ Neb. Rev. Stat. §81-1176 (2014 Reissue).

³⁵ 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.