

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Ron Reilly,
Appellant,

v.

Platte County Board of Equalization,
Appellee.

Case No: 16R 0026

Decision and Order

For the Appellant:

Ron Reilly,
Pro Se

For the Appellee:

Elizabeth Lay,
Deputy Platte County Attorney

This appeal was heard before Commissioners Steven Keetle and James Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is a lakefront residential parcel located in Platte County. The parcel is improved with a 1,976 square foot ranch style home. The legal description of the parcel is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 2 pages 3 through 7.

II. PROCEDURAL HISTORY

The Platte County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$144,525 for tax year 2016. Ron Reilly (the Taxpayer) protested this assessment to the Platte County Board of Equalization (the County Board) and requested an assessed valuation of \$119,525. The Platte County Board determined that the taxable value of the Subject Property for tax year 2016 was \$144,525.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on January 9, 2018.

III. STANDARD OF REVIEW

¹ Exhibit 1.

The Commission's review of the determination by a County Board of Equalization is de novo.² 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."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

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 Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

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 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.⁸

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 [and] may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal."⁹ 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

² See Neb. Rev. Stat. §77-5016(8) (2016 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).

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(9) (2016 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 *Bottof v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

⁹ Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”¹⁰ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹¹

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.¹²

“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.”¹³ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁴ 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.¹⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷

V. EQUALIZATION LAW

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.”¹⁸ Equalization is the process of ensuring that all taxable property is placed on the

¹⁰ Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

¹¹ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

¹² Neb. Rev. Stat. §77-112 (Reissue 2009).

¹³ *Id.*

¹⁴ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁵ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁶ See Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁷ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹⁸ *Neb. Const.*, Art. VIII, §1.

assessment rolls at a uniform percentage of its actual value.¹⁹ 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.²⁰ 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.²¹ Uniformity requires that, whatever methods are used to determine actual or taxable value for various classifications of real property, the results be correlated to show uniformity.²² 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.²³ The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁴ 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 There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁶

VI. ANALYSIS

The Subject Property is a residential parcel located on the lake in the Stires Lake Subdivision in Platte County upon which is a ranch style residential improvement. There are two different types of ownership arrangements for the lots and residential improvements located on the lake in the Stires Lake Subdivision. The first ownership arrangement is one where the owner of the lot and the improvements on that lot are the same person (Deeded Lot). The second ownership arrangement is one where the ownership of the lot itself is with one person and a separate person owns the improvements on the lot and leases the lot under a long term lease (Leased Lot). The Subject Property is a Deeded Lot where the Taxpayer owns both the lot and the improvements on

¹⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁰ *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).

²¹ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²² *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²³ *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).

²⁴ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

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

²⁶ *Id.* at 673, 94 N.W.2d at 50.

that lot. The Taxpayer alleges that the assessed value of the lot/land component of the Subject Property, a Deeded Lot, is not equalized with the assessed value of the lot/land component of a Leased Lot. The Property Record File for the Subject Property indicates that the land portion of the assessment is \$50,000.²⁷ The land/lot assessment made to the owner of the Leased Lots located on the lake in the Stires Lake subdivision range from \$10,000 to a maximum of \$20,000.²⁸ The Taxpayer has requested that the lot/land assessment of the Subject Property be reduced to \$20,000 to equalize its value with that of comparable Leased Lots.

The Assessor testified that the assessed lot/land component of a Deeded Lot and a Leased Lot are not comparable and that therefore they are assessed differently in Platte County. The Assessor testified however that the assessed value of the lot/land component of all Deeded Lots are determined in the same way and the assessed value of the lot/land component of all Leased Lots are determined in the same way. The reason that the Assessor assesses Deeded Lots differently than Leased Lots is that the Leased Lots are owned subject to the terms of a lease while the Deeded Lots are not subject to the terms of a lease and therefore have fewer restrictions on their use of the lot/land. The owner of the Deeded Lot has not transferred any of his rights, such as the right to use of the lot for the term of the lease, to anyone else while the owner of a Leased Lot has transferred some of his rights and no longer holds the same rights to the lot as she would if it were a Deeded Lot.

The record before the Commission does not contain a copy of a lease for any of the Leased Lots located in the Stires Lake Subdivision but the Assessor testified that he was aware of the terms of leases when he determined the assessed value of the Leased Lots. The Assessor further testified that although he was familiar with the terms of the leases he did not have copies of the leases when he determined the assessed values of the Leased Lots but that he does currently have copies of the leases in his office. Assessed values for the lot/land portion of a Leased Lot were determined based on the income from the leases, while the assessed value of the lot/land portion of a Deeded Lot was determined based on sales of comparable unrestricted properties.

²⁷ E2:4.

²⁸ E10

The Taxpayer acknowledged that there is a difference between the rights held in a Deeded Lot and the rights held in a Leased Lot but still maintained that the assessed values of these two types of properties were not equalized. To support his position the Taxpayer presented information regarding the recent sales of Leased Lots.²⁹ Each one of these Leased Lots sold for significantly more than their assessed values. The Taxpayer did not present any information regarding the sale of any Deeded Lots. 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.³⁰ The Taxpayer in this appeal has presented information regarding the assessed value and sales prices of Leased Lots, but without any information regarding the sales prices of Deeded Lots the Commission is unable to compare the ratio of assessed value to market value of Deeded Lots versus Leased Lots to determine if relief should be granted.

The Commission finds that the assessed valuation of the lot/land portion of a Deeded Lot should not be the same as the assessed valuation of the lot/land portion of a Leased Lot, as a potential buyer would not pay the same amount for a lot subject to a lease as they would for a lot without such restrictions. The Taxpayer presented evidence of the assessed values of Deeded Lots and Leased Lots as well as the sales prices of Leased Lots. The Taxpayer asserted that the sales presented demonstrated that the Leased Lots were being sold for more than their assessed value.³¹ The Taxpayer did not produce evidence of sales prices of Deeded Lots to allow the Commission to determine if Deeded Lots were assessed at a uniform and proportional amount with Leased Lots or if their assessed values were not equalized with Leased Lots, which may entitle the Taxpayer to relief.

²⁹ See, E11 & E 20

³⁰ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

³¹ The Commission notes that the sales presented were to the owners of the improvements located on the leased lots but further notes that analysis to determine the impact of this upon the sales prices of the leased lots is unnecessary due to the record presented.

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 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 appeal of the Taxpayer should be denied.

VIII. ORDER

IT IS ORDERED THAT:

1. The decision of the Platte County Board of Equalization determining the taxable value of the Subject Property for tax year 2016 is affirmed.³²
2. The taxable value of the Subject Property for tax year 2016 is:

Land:	\$50,000
<u>Improvements:</u>	<u>\$94,525</u>
Total:	\$144,525

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Platte County Treasurer and the Platte County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 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 2016.
7. This Decision and Order is effective for purposes of appeal on May 18, 2018.³³

Signed and Sealed: May 18, 2018

Steven A. Keetle, Commissioner

³² Taxable 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.

³³ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.

SEAL

James D. Kuhn, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.