

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Randy & Helen Strode,
Appellant,

v.

Saunders County Board of Equalization,
Appellee,

Case No: 09C-251, 09C-252,
09C-253, & 09C-254

Order on Remand
Denying Motion for Rehearing

FINDINGS OF FACT

1. A hearing was held on March 9, 2011, in the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South Lincoln, Nebraska, pursuant to an Order For Hearing and Notice of Hearing issued December 29, 2010.
2. The Commission afforded the Parties the opportunity to present evidence and argument.
3. The Decision and Order was issued on March 16, 2011.
4. On March 28, 2011, the Appellant filed with the Commission a Motion for Rehearing via facsimile.¹
5. On March 30, 2011, the Commission denied the Appellant’s Motion for Rehearing as being untimely filed.²
6. On May 2, 2011, the Appellant appealed the Decision and Order.
7. The Nebraska Supreme Court issued its decision in the cases captioned *Strode v. Saunders County Board of Equalization*, S-11-352 through S-11-355, on May 4, 2012, holding that the Appellant had timely filed its Motion For Rehearing.
8. The Court thereafter issued its Mandates on June 4, 2012. The Mandates direct that the Commission shall “proceed to enter judgment in conformity with the judgment and opinion of this court.”

¹ Title 442, *Neb. Admin. Code*, ch 5, § 023 (June 1, 2011).

² The “Order Denying Motion For Rehearing” was dated March 30, 2011, and signed by one Commissioner. The Commission’s rules require that, “The Motion for Rehearing must be approved by a majority of the Commissioners holding office at the time the Motion is filed.” Title 442 Neb. Admin. Code, ch. 5 §023.01 (June 1, 2011). The Commission’s “Order Denying Motion For Rehearing” was reversed and remanded by the Nebraska Supreme Court for reasons unrelated to the Commissioner’s signatures on the order.

9. The judgment and opinion referred to in the mandate concludes: “[W]e reverse the Court of Appeals’ dismissal of these appeals and remand those appeals to the Court of Appeals with directions to reverse the TERC’s denial of the motions for rehearing as untimely and to remand the causes to the TERC with directions to the TERC to consider the merits of the motions for rehearing.” *Supra*, at p. 8.
10. In its Motion For Rehearing, the Appellant asserted that the Commission “overlooked” Exhibit 2 (in combination with Exhibit 14) in each Decision And Order Affirming The Decision Of The Saunders County Board Of Equalization, dated March 16, 2011.

ANALYSIS

In its Motion, the Appellant alleges that in Orders dated March 16, 2011, the Commission made no mention of the specific contents of Exhibit 2 or Exhibit 14, both of which had been received in evidence at the hearing on March 9, 2011.³ The Appellant has further alleged that the Commission “overlooked” Exhibit 2 as evidence that amounted to clear and convincing evidence of the values of the parcels for tax year 2009.⁴ The Appellant alleges that the contents of Exhibit 2 should be determinative of the value of the parcels for tax year 2009, as an admission against the Appellee’s interest. We disagree.

An admission against interest is an evidentiary standard relating to the admission of evidence that would otherwise not be received as hearsay evidence and is not determinative of the weight that must be accorded to a piece of evidence.⁵ Exhibits 2 and 14 were offered at the hearing before the Commission, no objection was made to their receipt, and they were received into evidence and considered by the Commission. Therefore, the Appellant’s admission against interest allegation has no merit.

Exhibit 14 lists the credentials of a licensed appraiser, Terry Kubik. Exhibit 2 is a two page document, purported by the Taxpayer to have been prepared by Kubik in preparation for the

³ Transcript p. 9.

⁴ In fact, contrary to the assertion that the Commission “overlooked” Exhibit 2, each of the Orders of the Commission dated March 16, 2011, discuss Exhibit 2 on page 11. (Case Files)

⁵ See, Neb. Rev. Stat. §27-801 (Reissue 2008).

March 9, 2011, hearings before the Commission. Exhibit 2 is not held out to be, nor does it constitute, a real estate appraisal or opinion of value under professional standards. The exhibit lists the sales of one unimproved and six improved parcels in Saunders County from July 27, 1998, to June 6, 2008. Four of the sales occurred after July 1, 2007, and within 18 months of the assessment date for the subject properties of January 1, 2009. For each improved sale, a price per square foot (less land values) is listed, which ranged from \$4.50 to \$27.11. No adjustments were made to any of the sale prices to make the parcels comparable to the subject properties.⁶

Exhibit 2 notes that the four subject properties sold for a total of \$84,000, “after the current zoning regulations were in place.” Exhibit 2 notes that two of the sales were for \$40,000 each, one was for \$3,000, and one was for \$1,000.⁷ There is no reference in Exhibit 2 to an opinion of value as of an effective date, nor is the document signed, or dated.⁸ Exhibit 2 recommends a total value for the four parcels at \$84,000. This recommendation appears to be made with reference only to sale prices of the subject properties from 1999 to 2002, and without making any adjustments to any comparable properties. Exhibit 2 was received in evidence and considered by the Commission on page 11 of each of its Orders issued March 16, 2011, even though Kubik was not present to testify at the March 9, 2011, hearing.

The recommended values of the subject properties found in Exhibit 2 were exactly the same as the sale prices of the same parcels, all of which occurred at least six years prior to January 1, 2009.⁹

“It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not

⁶ “A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject, its price is brought closer to the subject’s unknown value.” *Appraising Residential Properties*, 4th Ed., Appraisal Institute, (2007) at pg. 334.

⁷ The Taxpayer purchased the subject property described at Exhibit 3:1 for \$3,000 on August 31, 1999. The Taxpayer purchased the subject property described at Exhibit 4:1 for \$40,000 on December 29, 2001. The Taxpayer purchased the subject property described at Exhibit 5:1 for \$40,000 on November 2, 2000. And the Taxpayer purchased the subject property described at Exhibit 6:1 for \$1,000 on April 18, 2002.

⁸ However, the Commission notes that since Exhibit 2 makes reference to the Commission’s four appeal numbers, the document was printed sometime after the notices of appeals, which were mailed to the Taxpayer on December 29, 2010.

⁹ Exhibit 3:1, 4:1, 5:1, 6:1.

conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.”¹⁰

The Taxpayer, Randy Strode, testified that sales of the two parcels in 2000 and 2001 were part of a family business agreement involving the Taxpayer, two of his brothers, and their father.¹¹ The family members agreed that the price paid by the Taxpayer for each of these parcels would be \$40,000. The Taxpayer’s testimony further indicated that he owned a partial interest in each of the properties that he purchased for \$40,000 prior to his purchase of them in 2000 and 2001, and that therefore each of the \$40,000 purchase prices was only for a partial interest in the property.¹²

The sales of the subject properties were more than six years prior to January 1, 2009. Two of the sales also were made between family members as part of a family business agreement, and the purchase price listed was only for a partial interest in the subject properties. As such, Exhibit 2 does not constitute clear and convincing evidence of the values of the subject properties on January 1, 2009.

CONCLUSIONS OF LAW

The Commission has considered all of the evidence received in the March 9, 2011 hearing. For the reasons stated in the Commission’s Orders dated March 16, 2011, and in this Order, the Appellant has failed to show good cause why the Motion For Rehearing should be granted, and the Motion For Rehearing for each of these appeals should be denied.

¹⁰ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

¹¹ Transcript pages 21-22.

¹² Transcript pages 43-45.

ORDER**IT IS THEREFORE ORDERED THAT:**

1. The Motion For Rehearing in each of the appeals is denied.
2. A copy of this Order shall be served upon each of the parties.
3. The date of this decision for purposes of appealing the Commission's Orders dated March 16, 2011, is August 30, 2012.

IT IS SO ORDERED.

Dated: August 30, 2012.

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Thomas D. Freimuth, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2011Supp.), other provisions of Nebraska Statute and Court Rules.