

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Thomas L. Hilt, Trustee,
Thomas L Hilt Revocable Trust
Appellant,

v.

Douglas County Board of Equalization
Appellee

Case Nos: 10R-126 & 11R-118

Decision Reversing the Determination
of the Douglas County
Board of Equalization

For the Appellant:

Thomas L Hilt,
Trustee, Thomas L. Hilt Revocable Trust

For the Appellee:

Theresia Urich,
Deputy Douglas County Attorney

Heard before Commissioners Hotz and Salmon

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in Douglas County. The parcel is improved with a 7,868 square foot home built in 2010. The legal description of the parcel is found at Exhibit 3:2. The property record card for the subject property is found at Exhibits 3, 5, 29, and 71-72.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the subject property was \$1,281,600 for tax year 2010 (Case 10R-126) and \$1,228,200 for tax year 2011 (Case 11R-118). Thomas L. Hilt, Trustee, Thomas L Hilt Revocable Trust (Taxpayer) protested these assessments to the Douglas County Board of Equalization (County Board) and requested an assessed valuation of \$1,058,000 for tax year 2010 (Case 10R-126) and \$1,058,000 for tax year 2011 (Case 11R-118). The County Board determined that the assessed value for tax year 2010 was \$1,281,600 (Case 10R-126) and \$1,228,200 for tax year 2011 (Case 11R-118). E4:1, E7:1.

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). The parties exchanged 89 exhibits prior to the appeal hearing. The Commission held a consolidated hearing on the appeals on February 23, 2012.

III. STANDARD OF REVIEW

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.” *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

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.

Id. 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. Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.). Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence. *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. 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) . 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. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

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.” Neb. Rev. Stat. §77-5016(8) (2011 Supp.). 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. Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

IV. STIPULATION

The parties stipulated that the value of the land for tax year 2010 was \$90,000. The parties also stipulated that the value of the improvements should be reduced by \$35,000 for both tax years due to a correction in the cost approach wherein the exterior framing should have been brick veneer rather than masonry.

V. 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.

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

Neb. Rev. Stat. §77-112 (Reissue 2009). “Actual value, market value, and fair market value mean exactly the same thing.” *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002). 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. Neb. Rev. Stat. §77-131 (Reissue 2009). All real property in Nebraska subject to taxation shall be assessed as of January 1. See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009). All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Reissue 2009).

B. Summary of the Evidence

The Taxpayer called Kurt Skradis, a registered appraiser since 2003 and licensed appraiser since 2008. Skradis testified he had been an employee with the Douglas County Assessor's office since 1998, and was responsible for the assessment of the subject property for tax years 2010 and 2011. He said that he had most recently inspected the subject property at some time in 2009, prior to the completion of the improvement.¹ At that time, Skradis said, he took measurements and made notes regarding the physical attributes of the improvement. It is important to note, however, that Skradis testified that multiple requests to inspect the subject property after completion of the improvements were denied by the Taxpayer. E3:12, E5:12.

Skradis testified that the County Assessor (Assessor) used the cost approach to value the subject property for both tax years. E29:7, E71:9. Since the Assessor determined that the improvement was only 90% complete on January 1, 2010, the Assessor gave a partial value of 90% for the improvement for tax year 2010. E29:7. The Assessor determined that the quality of the improvement was excellent in 2010, but reduced the quality rating to very good for tax year 2011.² E29:7, E71:9. The Commission notes that a reduction in the quality rating from excellent to very good is not quantified in the evidence received.

When calculating the cost detail for the improvement, Skradis testified that the Assessor gave no depreciation for either tax year, but allowed for a neighborhood adjustment of .85 for both years.³ E29:7, E71:9. The neighborhood adjustment effectively reduced the replacement cost new less depreciation of the improvement by 15% in both years. 2010: E29:7-8 ($\$1,347,717 * .85 = \$1,145,559$). 2011: E71:9-10 ($\$1,266,158 * .85 = \$1,076,234$).

Skradis admitted that the Assessor had assessed the subject property under the belief that the exterior of the improvement was masonry, but he testified, and the County Board stipulated at the appeal hearing, that the exterior should have been valued as frame brick veneer instead, resulting in a decrease in value of \$35,000 for each tax year.

¹ The Commission notes that for tax year 2010, and after the completion of the improvement, the Taxpayer testified that he refused requests by the Assessor to inspect the subject property. E3:12.

² The parties did not reach a stipulation regarding the quality rating of the improvement.

³ He testified the neighborhood adjustment of .85 was based upon an analysis of comparable sales.

Thomas Hilt testified on behalf of the Taxpayer. Hilt said he purchased the subject property on behalf of the Taxpayer on November 21, 2009, for \$1,057,103.⁴ He asserted the sale was an arm's-length transaction, and that it should have been used by the Assessor to determine the market value of the subject property for tax years 2010 and 2011. However, on cross-examination, Hilt admitted that the seller in 2009 was his daughter and her husband, and that the transaction had been affected by the fact that Hilt's prior residence had been destroyed by fire. He also testified on cross-examination that he had previously made a loan to his daughter and her husband to build the home, that he had helped secure discounts on labor and materials to build the home, and that he had been involved in overseeing its construction. Further, Hilt testified that the purchase of the subject property from his daughter and her husband did not involve any advertising on the open market, nor did it involve any realtors or brokers.

An arm's-length sale involves "[a] transaction between unrelated parties under no duress." *The Dictionary of Real Estate Appraisal*, 4th Ed., Appraisal Institute, (2002) at pg. 18. "[W]here the evidence discloses the circumstances surrounding the sale and shows that it was an arm's length transaction between a seller who was not under the compulsion to sell and a buyer who was not compelled to buy, it should receive strong consideration." *Potts v. Board of Equalization*, 213 Neb. 37, 47-48, 328 N.W.2d 175, 181 (1982), cited by *Dowd v. Board of Equalization*, 240 Neb. 437, 446, 482 N.W.2d 583, 589 (1992). Non-arm's length sales

are not made on the open market or are not made with the objective of maximizing the financial position of the parties involved. Thus, they provide unreliable evidence of market value. The following transactions can generally be considered non-arm's-length sales. ... *Sales between relatives* These are not open-market sales and are usually made at prices favorable to the buyer.

Mass Appraisal of Real Property, International Association of Assessing Officers, (1999) at 53. Hilt's assertion that the November 21, 2009, transaction was an arm's length transaction has little merit. Because the transaction was between relatives, was not made on the open market, and involved some measure of duress of the buyer, the Commission finds that the sale price of \$1,057,103 is unreliable evidence of the market value of the subject property.

⁴ E3:4, E7:6. For the 2010 Protest, the Referee hired by the County Board recommended a value of \$1,058,000 due to "[this] purchase." E4:2.

Hilt also asserted that the costs to build the improvement of the subject property should be used to indicate its market value. He testified that the construction costs included labor and materials costing \$918,000 after purchasing the land in 2007 for \$140,000. However, Hilt explained that the costs were discounted by 1% because certain labor and materials were purchased from family friends. Hilt did not quantify any of the amounts for labor or materials.

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 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.

Forney v. Box Butte County Bd. of Equalization, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637 (1998). The Commission finds that the cost to build the improvement is only one indicia of the market value of the subject property.

Hilt testified that the Assessor erred when accounting for the measurement of a lower level room that Hilt called a storage room and that the Assessor assessed as a basement. The Taxpayer offered what Hilt described as a blueprint of the room to support the Taxpayer's assertion that the area of the room was 1,270 square feet rather than 1,584 square feet. Exhibit 7:10. Hilt also testified the room was below the garage and was only accessible from the outside of the house. Because of the access limitation, Hilt asserted the space should receive a depreciation deduction for functional obsolescence. The Commission notes that both the Assessor and Hilt testified that Hilt had denied multiple requests made by the Assessor to conduct an interior inspection of the subject property.⁵ The Commission finds that Hilt's testimony, even when combined with Exhibit 7, page 10, is not persuasive.

VI. 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." *Neb. Const.*, Art. VIII, §1. Equalization is the process of ensuring that all taxable

⁵ Assessor notes indicate multiple requests for inspection were denied by Hilt in 2010. E3:12, E5:12.

property is placed on the assessment rolls at a uniform percentage of its actual value. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991). 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. *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). 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. 8 Neb.App. 582, 597 N.W.2d 623 (1999). 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. *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987). 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. *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). The constitutional requirement of uniformity in taxation extends to both rate and valuation. *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964). 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. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity. *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).

B. Summary of the Evidence

Hilt testified that the land value of the subject property was not equalized with comparable properties. The Taxpayer and the County Board stipulated to a land value of the subject property of \$90,000 for 2010.

The subject property is located in the Indian Creek Estates subdivision. The subject property, as well as multiple other properties, is located in close proximity to the Indian Creek Golf

Course. Many of these parcels, including the subject property, also are adjacent to and have a view of the golf course. E3:8, E10:1.

Skradis testified that the Assessor did a reappraisal of all land values in Indian Creek Estates for tax year 2011. Skradis said that when valuing the subject property and similar properties, he took into account the proximity and view of the golf course.

The Taxpayer offered property record cards for more than forty comparable parcels. The Commission takes particular note of those specific parcels which are adjacent to and have a view of the golf course, as does the subject property.⁶ Based upon the reappraisal conducted by Skradis for tax year 2011, the land component for these parcels ranged in taxable value from \$98,800 to \$160,000. The land component of the parcel just to the west of the subject property, Lot 39, had a taxable value of \$152,000,⁷ while the land component of the parcel just to the east of the subject property, Lot 41, had a taxable value of \$98,800.⁸ Skradis set the taxable value of the subject property, Lot 40, for tax year 2011 at \$152,000.⁹ The area of these three parcels was virtually the same: Lot 39 was 52,000 square feet; while the subject property and Lot 41 were each 50,000 square feet.¹⁰

The Commission notes that for tax year 2011, Lot 41 was a vacant site.¹¹ The first step of the cost approach to value is to estimate “the value of the site as though vacant and available to be developed to the highest and best use.”¹² Since the Assessor reappraised all of the parcels in Indian Creek Estates for tax year 2011, it follows that the taxable value of Lot 41, \$98,800, when valued “as though vacant,” should be similar to the taxable values of comparable parcels, whether the sites are vacant or improved. The Commission finds that for tax year 2011, the land

⁶ This includes Lots 32-45 as shown on Exhibit 10:1. The subject property is Lot 40. The property record cards for tax year 2011 for these parcels are found at Exhibits 55-82.

⁷ Exhibit 69:1. With an area of 52,000 square feet, this calculates to \$2.92 per square foot. This parcel was sold by Caniglia Builders, Inc. for \$158,000 on December 10, 2009. Exhibit 28:1.

⁸ Exhibit 73:1. With an area of 50,000 square feet, this calculates to \$1.98 per square foot. The subject parcel was sold by Gottsch Land Co. for \$140,000 on September 14, 2007. Exhibit 29:1.

⁹ Exhibit 71:1. With an area of 50,000 square feet, this calculates to \$3.04 per square foot. This parcel was sold by Caniglia Builders, Inc. for \$160,000 on May 18, 2009. Exhibit 30:1.

¹⁰ The Commission has determined that per square foot values for tax year 2011 for all of the parcels included in footnote 7 above ranged from \$1.92 to \$3.04.

¹¹ A site is “[l]and that is improved so that it is ready to be used for a specific purpose.” *Dictionary of Real Estate Appraisal*, Appraisal Institute, *Fourth Ed.*, (2002) p. 266.

¹² *Appraising Residential Properties*, Appraisal Institute, 4th Ed. (2004) p. 257.

component of the subject property is not equalized with the taxable value of Lot 41, a parcel of equal size and comparable proximity to the golf course. The contribution to value of the land component of the subject property for tax year 2011 should be the same as that of Lot 41.

VII. CONCLUSION

The Commission finds that there is 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 clear and convincing evidence that the County Board's determinations of value were arbitrary or unreasonable.

For all of the reasons set forth above, the determinations of the County Board are vacated and reversed.

VIII. ORDER

IT IS ORDERED THAT:

1. The decision of the Douglas County Board of Equalization determining the values of the subject property for both tax years 2010 and 2011 are vacated and reversed.¹³
2. The assessed value of the subject property for tax years 2010 and 2011 are:

2010	Land	\$90,000
	Improvement	<u>\$1,110,559</u>
	Total	\$1,200,559
2011	Land	\$98,800
	Improvement	<u>\$1,041,234</u>
	Total	\$1,140,034

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 (2011 Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.

¹³ 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.

5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax years 2010 and 2011.
7. This order is effective for purposes of appeal on March 16, 2012

Signed and Sealed: March 16, 2012

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

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