

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Ray L. Gustafson,
Appellant,

v.

Douglas County Board of Equalization,
Appellee

Case No. 10R 530

Order Reversing the Determination by the
Douglas County Board of Equalization

Case No. 11R 459

Order Affirming the Determination by the
Douglas County Board of Equalization

For the Appellant:

Ray L. Gustafson,
Pro Se

For the Appellee:

Sandra Connelly,
Deputy Douglas County Attorney

Heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in Douglas County, Nebraska. The 1.28 acre parcel is improved with a 1,884 square foot home. The legal description of the parcel is found at Exhibit 3:3. The property record card for the Subject Property is found at Exhibit 3.

II. PROCEDURAL HISTORY

The Douglas County Assessor (Assessor) determined that the assessed value of the Subject Property was \$193,200 for tax year 2010, including \$64,000 for the land and \$129,200 for the improvement. The Assessor determined that the assessed value of the Subject Property was \$175,200 for tax year 2011, including \$64,000 for the land component and \$111,200 for the improvement. Ray L. Gustafson (the Taxpayer) protested each of these assessments to the Douglas County Board of Equalization (County Board) and requested an assessed valuation of

\$139,800 for tax year 2010 and \$118,000 for tax year 2011. The County Board determined that the assessed value was \$175,200 for tax year 2010¹ and was \$160,900 for tax year 2011².

The Taxpayer appealed each decision of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the consolidated hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The Commission held a hearing on September 6, 2012.

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

¹ E1.

² E2.

³ See, Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.), *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

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) (2010 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).

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 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

IV. 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.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

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

¹⁰ Neb. Rev. Stat. §77-5016(8) (2011 Supp.).

¹¹ Neb. Rev. Stat. §77-5016(6) (2011 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).

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

B. Summary of the Evidence

Ray Gustafson testified on his own behalf, and he also called Larry Thomsen. Thomsen is a licensed registered appraiser, and is an employee of the Assessor. Thomsen testified that the Assessor used a sales comparison approach to value the Subject Property. Thomsen reviewed and signed the Assessment Reports for tax years 2010,¹⁸ and 2011¹⁹. On February 8, 2011, (subsequent to the 2010 protest proceedings, and after the County Board's determination of value for tax year 2010), an employee of the Assessor, Kevin Corcoran, visited the Subject Property and met with Gustafson.²⁰ Corcoran was not allowed to conduct an internal inspection of the property.²¹ Corcoran and Gustafson met in the breezeway of the home, and Corcoran was allowed to confirm that the home did not have a finished basement, but instead had a crawl space.²² Based on this visit to the home, Corcoran made several revisions to the property record card for the Subject Property and recalculated the mass appraisal market calculation detail.²³ These changes resulted in an overall reduction in taxable value for the parcel to \$160,900.²⁴

Gustafson testified that the characteristics of the property, as observed by Corcoran on February 8, 2011, were the same as they were on January 1, 2010, and January 1, 2011. Thomsen testified to his opinion that the actual value for the Subject Property was \$160,900 for both tax years 2010 and 2011. We give significant weight to Thomsen's opinion of value, and find that his opinion is clear and convincing evidence of the actual value of the Subject Property for both tax years 2010 and 2011.

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

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

¹⁸ Exhibit 3.

¹⁹ Exhibit 5.

²⁰ Exhibit 3:10, and testimony of Ray Gustafson.

²¹ Exhibit 3:10, and testimony of Gustafson.

²² Testimony of Gustafson.

²³ Exhibit 3:10; Exhibit 5:10. Both quality and condition ratings were downgraded from good to average. Basement finish was removed. Decreased basement square footage from 1,664 to 384. Removed breezeway 200 square feet from gross living area, and changed to enclosed solid wall. Added 200 square feet brick veneer.

²⁴ Exhibit 5:10, and testimony of Thomsen.

V. 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.”²⁵ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁶ 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.²⁷ 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.²⁸ 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.²⁹ 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.³⁰ The constitutional requirement of uniformity in taxation extends to both rate and valuation.³¹ 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].”³² “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”³³

B. Summary of the Evidence

Gustafson asserted that the Subject Property should be equalized with all other parcels in Douglas County. He testified regarding a system he had developed to determine property values.

²⁵ *Neb. Const.*, Art. VIII, §1.

²⁶ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁷ *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).

²⁸ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²⁹ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³⁰ *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).

³¹ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³² *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³³ *Id.* at 673, 94 N.W.2d at 50.

The system involved analyzing historical sales and projecting current values. Gustafson asserted he could determine the current market value of a parcel based upon its sales price from as long as decades prior. He offered numerous exhibits to demonstrate his system. The Commission received these exhibits into evidence with the understanding that the weight of the evidence would be determined by the Commission. After reviewing the evidence received, the Commission finds that Gustafson's system is not a professionally accepted mass appraisal method to determine actual value of the Subject Property.³⁴ Without any clear and convincing evidence of actual values, the Commission is unable to determine the ratios of the assessed values to actual values for purposes of determining if there are disproportionate valuations.

Gustafson specifically asserted that the land component of the Subject Property was not equalized with the land component of comparable parcels in Douglas County. He offered Exhibit 23 in support of this assertion. Exhibit 23 includes dozens of incomplete property record cards showing only the land component portion for tax year 2010. In our review of the 139 page exhibit, the Commission identified 50 parcels, including the Subject Property, which were all from the same tax district, and were further identified as being rural residential properties, 20 acres or smaller in size.³⁵

The Subject Property, a 1.28 acre parcel, as well as a .46 acre parcel and a .43 acre parcel were each assessed at \$50,000 per acre,³⁶ a 2.9 acre parcel was assessed at \$35,000 per acre,³⁷ and a 1.953 acre parcel was assessed at \$28,000 per acre³⁸. Nineteen parcels ranging in size from 3.1 acres to 9.89 acres were assessed at \$20,000 per acre.³⁹ Two parcels with 7.1 acres and 9.47 acres were assessed at \$18,000 per acre.⁴⁰ Three parcels with 7 acres, 9.17 acres, and 9.27 acres were assessed at \$17,000 per acre.⁴¹ Five parcels ranging from 4.07 acres to 12.52 acres were assessed at \$15,000 per acre.⁴² Fifteen parcels ranging in size from 10.01 acres to 17.78

³⁴ See Neb. Rev. Stat. §77-112 (Reissue 2009).

³⁵ Each property record card contained like identification of Tax Dist: 0131, LEA: RR_07, Acct Type: Rural Res <=20, Land Type Residential, however no explanation of these identifiers was given.

³⁶ Exhibit 3:6, Exhibit 23:32, and Exhibit 23:33 respectively.

³⁷ Exhibit 23:45.

³⁸ Exhibit 23:34.

³⁹ Exhibit 23, pages 20-26, 28-29, 63, 65-66, 82, 102-103, 105, 108, 123, and 127.

⁴⁰ Exhibits 23:118 and 23:88.

⁴¹ Exhibits 23:40, 23:119, and 23:128.

⁴² Exhibit 23, pages 38, 46, 64, 117, and 120.

acres were assessed at \$12,500 per acre.⁴³ Finally, a 5.04 acre parcel was assessed at \$10,873 per acre.⁴⁴

Our review of Exhibit 23 leads us to find that generally the smaller parcels in the same taxing district as the Subject Property were assessed at greater amounts per acre for the land component.⁴⁵ This is consistent with the economies of scale principle that: “Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase.”⁴⁶ In an appeal “the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment.”⁴⁷ We conclude that there is not clear and convincing evidence that valuation placed upon the Subject Property, when compared to the valuations placed on the parcels identified in Exhibit 23, is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty.

The Commission finds that the evidence presented by the Taxpayer does not rebut the presumption in favor of the County Board determinations for either tax year 2010 or 2011, nor is there clear and convincing evidence that the determinations by the County Board were arbitrary or unreasonable.

VI. CONCLUSION

For tax year 2010, 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 determination and that there is clear and convincing evidence that the County Board’s decision was arbitrary or unreasonable.

For tax year 2011, 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

⁴³ Exhibit 23, pages 13, 15, 42, 69, 73-74, 78-79, 84, 104, 107, 109, 121-122, and 124.

⁴⁴ E23:80.

⁴⁵ Three properties under two acres in size, including the Subject Property, were valued at \$50,000 per acre. One 2.9 acre parcel was valued at \$35,000 per acre. One 1.953 acre property was valued at \$28,000 per acre.

⁴⁶ Appraisal Institute, *The Appraisal of Real Estate*, 13th Ed. (2008) at 212.

⁴⁷ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008).

evidence to make its determination and 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 determination of the County Board for tax year 2010 is reversed, and the determination of the County Board for tax year 2011 is affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Douglas County Board of Equalization determining the value of the subject property for tax year 2010 is reversed.⁴⁸ The decision of the Douglas County Board of Equalization determining the value of the subject property for tax year 2011 is affirmed.
2. The assessed value of the subject Property for both tax years 2010 and 2011 is:

Land	\$ 64,000
Improvement	\$ <u>96,900</u>
Total	\$160,900
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 (2011Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
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.

⁴⁸ 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.

7. This order is effective for purposes of appeal on September 11, 2012.

Signed and Sealed: September 11, 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.