

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Scott A. McDaniel,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 12R 1175

Decision Affirming Douglas
County Board of Equalization

1. A Single Commissioner hearing was held on December 12, 2013, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Salmon.
2. Scott A. McDaniel (the Taxpayer) was present at the hearing.
3. Larry Thomsen, Appraiser for Douglas County Assessor’s Office, was present for the Douglas County Board of Equalization (the County).
4. The Subject Property (Subject Property) is residential parcel improved with a 2,492 square foot 2 story single family dwelling, with a legal description of: Lot 150, The Knolls 2nd, Omaha, Douglas County, Nebraska.

Background

5. The Douglas County Assessor assessed the Subject Property at \$171,300 for tax year 2012.
6. The Taxpayer protested this value to the Douglas County Board of Equalization and requested an assessed value of \$138,000 for tax year 2012.
7. The Douglas County Board of Equalization determined that the assessed value of the Subject Property was \$171,300 for tax year 2012.
8. The Taxpayer appealed the determination of the County to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

9. The Commission’s review of the determination of the County Board of Equalization is de novo.¹ “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

¹ See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.”²

10. When considering an appeal 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
11. 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
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. 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
14. The Taxpayer purchased the Subject Property in September 2011, for \$143,000. The sale was a foreclosure sale. The Taxpayer stated that he had done some painting and fixed some of the sheet rock on the Subject Property for around \$2,000 and gave his opinion of value as \$145,000.
15. The Taxpayer’s opinion of value was derived by adding the expenses for improvements to the foreclosure sale price.
16. The Nebraska Supreme Court has consistently held that sales price is not synonymous with actual value.⁸ It is necessary to know the “character and circumstances” of a sale in order to determine that a sale is competent evidence of actual value.⁹ Where evidence indicates that a sale was part of an arm’s length transaction, the sale price should be given strong consideration.¹⁰

² *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(8) (2012 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 *Josten-Wilbert Vault Co. v. Board of Equalization*, 179 Neb. 415, 417, 138 N.W.2d 641, 643 (1965); *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 46, 328 N.W.2d 175, 180 (1982); *Dowd v. Board of Equalization*, 240 Neb. 437, 482 N.W.2d 583 (1992).

⁹ *Josten-Wilbert Vault Co. v. Board of Equalization*. 179 Neb. 415, 417, 138 N.W.2d 641, 643 (1965).

¹⁰ *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 47, 328 N.W.2d 175, 181 (1982).

17. An auction price is admissible evidence and *may* be taken into consideration.¹¹ Under some conditions the auction price may be better evidence of sale price than appraisal evidence.¹² Sales price or auction price is not always the best evidence of value, and each determination must be made on a case by case basis.¹³ “The statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its ‘market value in the ordinary course of trade.’”¹⁴ This interpretation is required by Nebraska Statutes section 77-112.¹⁵
18. “The terms *price*, *cost*, and *value* are used and defined carefully by appraisers.”¹⁶ “The term price refers to the amount a particular purchaser agrees to pay and a particular seller agrees to accept under the circumstances surrounding their transaction.”¹⁷ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁸ Actual value is defined by Nebraska Statutes section 77-112 and means “the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market” and not the particular amount of a specific transaction.¹⁹ The distinctions between *price* and *actual value* are meaningful. They acknowledge that circumstances and factors may effect a particular purchase price to such an extent that it is of limited value or irrelevant in determining the actual value of a property. Factors which tend to illustrate that a transaction is not an arm’s length transaction harm the credibility and relevance of a purchase price in determining the actual value of a subject property.
19. An arm’s length transaction is defined as: “A transaction between unrelated parties under no duress.”²⁰ Some types of transactions are generally considered to be non-arm’s-length transactions because they are not made on the open market or one or all of the parties involved in the transaction are not operating with the objective of maximizing their financial position.²¹ These sales include: (1) Sales involving courts, governmental entities, or public utilities; (2) Sales involving charitable, religious, or educational institutions; (3) Sales in which the financial institution is the buyer; (4) Sales in which a financial institution is the seller and not on the open market; (5) Sales between relatives or corporate affiliates; (6) Sales of convenience; and (7) Estate sales.²²

¹¹ *In re Estate of Craven v. Union Bank and Trust*, 281 Neb. 122, 128, 794 N.W.2d 406, 410 (2011).

¹² *Id.* at 128, 794 N.W.2d at 411.

¹³ *Id.*

¹⁴ *US Ecology, INC., v. Boyd County Board of Equalization*, 256 Neb. 7, 18, 588 N.W.2d 575, 583 (1999) (citing Neb. Rev. Stat. §77-112). See also, *Cabela’s Inc. v. Cheyenne County Bd. Of Equalization*, 8 Neb.App. 582, 591, 597 N.W.2d 623, 632 (1999) (citations omitted).

¹⁵ *Cabela’s Inc. v. Cheyenne County Bd. Of Equalization*, 8 Neb.App. 582, 591, 597 N.W.2d 623, 632 (1999) (citations omitted).

¹⁶ Appraisal Institute, *The Appraisal of Real Estate*, at 21 (13th ed. 2008).

¹⁷ *Id.*

¹⁸ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁹ Neb. Rev. Stat. §77-112 (Reissued 2009).

²⁰ Appraisal Institute, *The Dictionary of Real Estate Appraisal*, at 18 (4th ed. 2002).

²¹ International Association of Assessing Officers, *Mass Appraisal of Real Property*, at 53-54 (1999).

²² *Id.*

20. The Commission finds that the foreclosure sale of the Subject Property was not an arm's length transaction. The Commission, therefore, gives this sale little weight.
21. The Taxpayer asserted that the condition of the Subject Property was lower than assessed. Specifically, the Taxpayer asserted that the deck was unusable and that the Subject Property has not been updated since it was built in 1978. The Taxpayer produced photographs of the Subject Property to show the condition of the deck.
22. The Appraiser, after reviewing the photos, agreed that the deck was unusable and that the condition of the Subject Property was average and not good as noted on the Market Calculation Detail. The Appraiser also noted that the Taxpayer indicated that areas of the basement were finished, but the County Assessor had not assessed any basement finish for the Subject Property.
23. The Commission finds that the Subject Property should be assessed for basement finish as were other comparable properties presented at the hearing. The Commission notes that the basement finish would add \$11,745 to the actual value of the Subject Property. The Commission also finds that the deck does not contribute to the actual value of the Subject Property and that the condition of the Subject Property as of January 1, 2012 was average. These changes deduct \$11,707 from the actual value of the Subject Property.²³
24. The Commission notes that after appropriate adjustments for the finished basement area, condition of the Subject Property, and deduction of the deck, the indicated actual value of the Subject Property is \$39 higher than the County Board's value. The Commission finds that while the County Board's valuation was based upon an errant condition rating and characteristics, the County Board's valuation is reasonable for the Subject Property.
25. The Taxpayer provided the Commission with a spreadsheet and MLS sheets for five sales of alleged comparable properties. He noted the sale price per square foot of each of the five sales.
26. The Commission notes that the Taxpayer included the finished portion of the basement in the area of the properties.
27. The correct procedure is to use above grade square footage only. "[G]ross living area is the total area of finished, above-grade residential space, calculated by measuring the outside perimeter of the structure and includes only finished, habitable, above-grade living space. (Finished basements and attic areas are not generally included in the total gross living area.)"²⁴
28. The Commission also finds that finished area of the basement is assessed at a lesser value.²⁵

²³ (basement finish 675 SF x 20=13,500 x .87 NBHD=\$11,745. Ave Condition -10,000 and deck -3,456 x .87 Nhd = -11,706.)

²⁴ *The Appraisal of Real Estate, thirteenth edition*, Appraisal Institute, page 237.

²⁵ An examination of the Cost Detail for comparable properties found within the County Assessor's Assessment Report indicates that basement finish was assessed at \$20-25 per square foot while other finished living area was assessed at \$45-50 per square foot.

29. According to Nebraska Statute §77-1371, “[c]omparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value.” Further, generally accepted mass appraisal techniques require that after selecting comparable sales, the assessor must “[l]ook for differences between the comparable sale properties and the subject property using the elements of comparison. Then adjust the price of each sale to reflect how it differs from the subject property or eliminate that property as a comparable.”²⁶
30. The Commission finds that the alleged comparable properties are not truly comparable. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.²⁷ The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.²⁸ The comparison of assessed values of dissimilar parcels is not recognized as an appropriate approach. Without quantified adjustments to the comparable property for all of the different physical characteristics, the Taxpayer’s assertions based upon the comparison of the alleged comparable property and the Subject Property are given little weight.
31. The Taxpayer did not provide the Commission with the Property Record Cards of the alleged comparable properties.
32. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
33. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

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 2012, is Affirmed.
2. That the Taxable value of the Subject Property for tax year 2012 is:

Land	\$ 20,400
<u>Improvements</u>	<u>\$150,900</u>
Total	\$171,300

²⁶ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute, 2008 at 301-02.

²⁷ Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁸ *Id.*

3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.)
4. Decision and Order Each Party is to bear its own costs in this proceeding.
5. This Decision and Order shall only be applicable to tax year 2012.
6. This Decision and Order is effective on December 27, 2013.

Signed and Sealed: December 27, 2013

Nancy J. Salmon, Commissioner