

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Curtis J. Peters
Appellant,

v.

Douglas County Board of Equalization
Appellee

Case No: 10R-648

Decision Reversing the Determination of the
Douglas County Board of Equalization

For the Appellant:

Curtis J. Peters,
Pro Se.

For the Appellee:

Matthew Boever, Deputy
Douglas County Attorney.

Heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in Douglas County. The parcel is improved with a 3,112 square foot, two-story home. The legal description of the parcel is found at Exhibit 2, page 2. The property record card for the Subject Property is found at Exhibit 2, pages 3 through 6.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the Subject Property was \$310,500 for tax year 2010.¹ Curtis J. Peters (Taxpayer) protested this assessment to the Douglas County Board of Equalization (County Board) and requested an assessed valuation of \$268,600.² The County Board determined that the assessed value for tax year 2010 was \$310,500.³

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The parties stipulated to the receipt of Exhibits 1, 2, 3 and 4. The Commission held a hearing October 10, 2012.

¹ Exhibit 1:1

² Exhibit 4.

³ Exhibit 1:1 .

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.⁴ 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."⁵

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.⁶

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.⁷ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁹ 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.¹⁰

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."¹¹ The commission may also "take notice of judicially cognizable facts and in

⁴ 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). "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).

⁵ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁶ *Id.*

⁷ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁸ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁹ 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).

¹⁰ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹¹ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

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.”¹²

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.¹³

"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."¹⁴ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁵ 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.¹⁶ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁷ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁸

B. Summary of the Evidence

The Taxpayer purchased the Subject Property for \$310,000 in 2005.¹⁹ Based on a reappraisal performed by the County in 2007, the Subject Property was assessed at \$317,700 in 2007, 2008 and 2009.²⁰ The Taxpayer protested the \$317,700 assessed valuation in 2009 and obtained a reduction by the County Board to \$282,000. For the 2010 tax year, the County assessed the

¹² Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

¹³ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁴ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁵ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁶ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁷ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁸ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹⁹ Exhibit 2:3.

²⁰ Exhibit 2:13.

Subject Property at \$310,500 based on a reappraisal of the neighborhood in which the Subject Property is located.²¹

The Taxpayer testified that he obtained an appraisal in connection with a refinancing on the Subject Property in the last year. This appraisal was not offered into evidence for the Commission to review, but the Taxpayer testified that it valued the Subject Property at \$300,000.

The Taxpayer asserted that the comparables used by the County in its "Assessment Report" at page 10 of Exhibit 2 are not comparable because each includes a walkout basement, while the Subject Property does not. In response, Larry Thomsen of the County Assessor's Office (referred to herein as the "County's Appraiser") testified that the County uses a Computer Assisted Mass Appraisal model involving Multiple Regression Analysis, and that the County uses the comparables such as those set forth on page 10 of Exhibit 2 for the purpose of calibrating the model. The County's Appraiser also testified that the "walkout" basement feature does not significantly impact assessed valuation.

The Taxpayer also asserted that the County's mass appraisal model attributes an unreasonable valuation to finished basements. The Taxpayer referred to page 3 of Exhibit 2 in testifying that the Subject Property sold for \$296,000 in 2002. Thus, because the basement was finished between 2002 and 2005, the Taxpayer testified that his \$310,000 purchase price in 2005 demonstrates that the finish to his basement should be valued in the area of \$14,000. The County's mass appraisal model attributes a value of \$30,800 to the Taxpayer's finished basement.²² Based on the multiple variables associated with the active real estate market during the period 2002 to 2005, the Commission is not persuaded that the Taxpayer's assertion is clear and convincing evidence that the County's 2010 model in terms of finished basement valuation is unreasonable or arbitrary.

The Taxpayer further asserted that the County's 2010 mass appraisal model is unreasonable because it fails to accurately account for the County Board's significant reduction in the valuation of the Subject Property from \$317,700 to \$282,000 in 2009. The assessed value for real property may be different from year to year, dependent upon the circumstances.²³ For this

²¹ Exhibit 2:13

²² Exhibit 2:11.

²³ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

reason, a prior year's assessment is not relevant to the subsequent year's valuation.²⁴ Therefore, the Commission is not persuaded that the Taxpayer's assertion regarding the significant increase in assessed value from 2009 to 2010 constitutes clear and convincing evidence that the County's 2010 model is unreasonable or arbitrary.

At the hearing the County's Appraiser offered a revised opinion of value for the Subject Property. Based on an inspection in September of 2010, the County's Appraiser referenced pages 8, 11 and 12 of Exhibit 2 in testifying as follows with respect to adjustments to the assessed value of the Subject Property: (1) condition was adjusted downward from very good to good, resulting in a downward adjustment in the amount of \$16,500; (2) number of bathrooms was increased from 3.5 to 4.5, resulting in an upward adjustment in the amount of \$5,500; and (3) finished basement square footage was increased from 1,400 square feet to 1,550 square feet, resulting in an upward adjustment in the amount of \$3,300. Based on this \$7,700 net downward adjustment, the County's Appraiser also testified that the adjusted improvement value in the amount of \$272,485²⁵, together with a land value of \$30,000²⁶, accurately reflects the total value of the Subject Property of \$302,485 for tax year 2010.

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."²⁷ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁸ 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.²⁹ 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 Uniformity requires that whatever methods are used to determine actual or taxable value for various

²⁴ See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

²⁵ E2:12

²⁶ E2:12

²⁷ *Neb. Const.*, Art. VIII, §1.

²⁸ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁹ *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).

³⁰ 8 Neb.App. 582, 597 N.W.2d 623 (1999).

classifications of real property that the results be correlated to show uniformity.³¹ 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.³² The constitutional requirement of uniformity in taxation extends to both rate and valuation.³³ 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.³⁴

B. Summary of the Evidence

The Taxpayer's appeal to the Commission states that several properties near the Subject Property received a downward valuation adjustment from the 2009 tax year to the 2010 tax year, while the Subject Property received a \$28,500 increase. Thus, the Taxpayer asserted that the 2010 assessed valuation of the Subject Property is not equalized with his neighbors. The Taxpayer, however, did not produce property record cards of the neighbor properties, so the Commission is unable to analyze his equalization argument.

Paragraph 12 of the Commission's "Order To Vacate Single Commissioner Designation And Amended Order For Hearing And Notice" in this matter requires parties to provide the Commission "[c]opies of the County's Property Record File for any parcel a party will assert is a comparable parcel." Additionally, the Commission notes that paragraph 12 provides that "[a] screen shot or print out of a web page is not a property record file. A property record file is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing."

VI. 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 determination. The Commission also finds that there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

³¹ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³² *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).

³³ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³⁴ *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).

For all of the reasons set forth above, the decision of the County Board is vacated and reversed.

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 vacated and reversed.³⁵
2. The assessed value of the Subject Property for tax year 2010 is:

Improvement: \$272,485
Land: \$ 30,000
Total: \$302,485
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 (2012 Cum. Supp.)
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 year 2010.
7. This order is effective for purposes of appeal on May 31, 2013.

Signed and Sealed: May 31, 2013.

Thomas D. Freimuth, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2012 Cum. Supp.) and other provisions of Nebraska Statute and Court Rules.

³⁵ 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.