

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gary R. Ralston,
Appellant,

v.

Knox County Board of Equalization,
Appellee.

Case No: 11R 250

Decision and Order Affirming the
Determination of the Knox County Board of
Equalization

For the Appellant:

Gary R. Ralston,
Pro Se.

For the Appellee:

Verlyn Luebbe,
Knox County Attorney.

This appeal was heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in Knox County, Nebraska. The Subject Property is a 1.14 acre rural residential parcel improved with a 1,656 square foot residence built in 1974.¹ The legal description of the parcel and the property record card for the Subject Property are found at Exhibit 3.

II. PROCEDURAL HISTORY

The Knox County Assessor determined that the assessed value of the Subject Property was \$97,470 for tax year 2011. Gary R. Ralston (the Taxpayer) protested this assessment to the Knox County Board of Equalization (the County Board) and requested an assessed valuation of \$80,310. The Knox County Board determined that the taxable value for tax year 2011 was \$97,470.²

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). This appeal was designated for a single commissioner hearing and a single commissioner hearing was held on August 13, 2012. An order by a single commissioner

¹ E3:5.

² E4:5.

was issued on August 23, 2013.³ The County Board filed a timely request for a rehearing on September 9, 2013.⁴ The Commission issued an Order for Rehearing and Notice of Rehearing vacating the August 23, 2013, single commissioner order and setting the appeal for a de novo informal hearing on the merits before the Commission on December 13, 2013.⁵ Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.⁶ This same standard is applicable even when a party has requested a rehearing after a single commissioner proceeding.⁷ 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."⁸

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.⁹

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.¹⁰ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹¹

³ Decision Reversing County Board of Equalization, issued after the single commissioner proceeding heard by Commissioner Thomas D. Freimuth.

⁴ Such a rehearing request is authorized under Neb. Rev. Stat. §77-5015.02(5).

⁵ Under Neb. Rev. Stat. §77-5005(4), the Commission is required to grant such a rehearing request.

⁶ See, Neb. Rev. Stat. §§77-5016(8) and (14) (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).

⁷ Neb. Rev. Stat. §77-5015.02.

⁸ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁹ *Id.*

¹⁰ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

¹¹ *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.¹² 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.¹³

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.”¹⁴ 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.”¹⁵

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.¹⁶

“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.”¹⁷ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁸ 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

¹² 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).

¹³ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹⁴ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

¹⁵ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

¹⁶ Neb. Rev. Stat. §77-112 (Reissue 2009).

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).

as assessed value.¹⁹ All real property in Nebraska subject to taxation shall be assessed as of January 1.²⁰ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²¹

B. Summary of the Evidence

Gary Ralston testified that the assessed value of the Subject Property has increased 21% since tax year 2009, and that the property taxes relating to the parcel had increased 17% in the same time frame. He argued that these increases should not have occurred when the housing markets were in “dire straits.” The Commission finds that the assessed value for real property may be different from year to year, dependent upon the circumstances.²² For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.²³

Ralston testified that he did not understand the single commissioner decision, and that he just wanted his assessed value and his taxes “rolled back” to 2008 levels. He further argued that assessed values should track with inflation. Ralston further testified that he purchased the Subject Property in September of 1998, for \$90,000 and since that time he has added a pole shed.

Monica McManigal, Knox County Assessor since 1998, testified on behalf of the County Board. McManigal explained that recent sales of similar properties were used to build a mass appraisal model, which was then applied to the assessment of the Subject Property. McManigal testified that for purposes of this assessment process, the Subject Property was included in the same “neighborhood” as all other rural residential parcels under 20 acres in size. McManigal explained that the sales file was applicable to this modeling.²⁴

McManigal explained that she followed a “2011 Residential Pricing” schedule to value the first acre of the Subject Property at \$14,000 per acre, and the remaining .14 acres at \$3,500 per acre.²⁵ According to the “Acreage Factor Schedule” of the pricing schedule, this was based upon \$1,000 per acre multiplied by 350%, since the 1.14 acre size of the parcel was between 1.00 and

¹⁹ Neb. Rev. Stat. §77-131 (Reissue 2009).

²⁰ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

²¹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²² See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

²³ 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).

²⁴ See, E6:10.

²⁵ See, E6:28.

2.99 acres. The Commission finds that the County Assessor valued the Subject Property using a statutorily permissible mass appraisal method.²⁶

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 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 [sic].”³⁴ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”³⁵ “To set the

²⁶ See, Neb. Rev. Stat. §77-112 (Reissue 2009).

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

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, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³⁵ *Id.* at 673, 94 N.W.2d at 50.

valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”³⁶

B. Summary of the Evidence

Ralston provided property record files for three alleged comparable properties which he asserted received favorable assessments when compared with the Subject Property.³⁷ After reviewing the evidence, the Commission finds that there are few meaningful comparisons that could be made between the Subject Property and the alleged comparable properties offered by Ralston. The Subject Property was assessed as a rural residential parcel because it was located 1.5 miles from Creighton, Nebraska. The parcel relating to Exhibit 13 was located in the town limits of Bazile Mills, Nebraska. The parcel relating to Exhibit 14 was located in the city limits of Creighton, Nebraska. The parcel relating to Exhibit 12 consisted of 76.67 acres assessed as an agricultural parcel, of which 5.85 acres was classified as farm site,³⁸ and 1.0 acre was classified as farm home site.³⁹ The Subject Property consisted of 1.14 acres, assessed as a rural residential parcel. Two of the parcels were located within the city or town limits and the third was an agricultural parcel. None of the three alleged comparable parcels were rural residential parcels.

The Commission finds that the Taxpayer’s alleged comparable properties are not substantially similar to the Subject Property and therefore not comparable to the Subject Property. The Commission further finds that differences between assessed values are explained by the different characteristics of the properties.

VI. CONCLUSION

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 evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board’s decision was arbitrary or unreasonable. The Commission finds there is not

³⁶ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

³⁷ See, E13, E14, and E15.

³⁸ E2:12. A “farm site” is “the portion of land contiguous to land actively devoted to agriculture which includes improvements that are agricultural or horticultural in nature, including any uninhabitable or unimproved farm home site.” Neb. Rev. Stat. §77-1359(4).

³⁹ E2:12. A “farm home site” is “land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes and which is located outside of urban areas or outside a platted and zoned subdivision.” Neb. Rev. Stat. §77-1359(3).

clear and convincing evidence that valuation placed on the Subject Property when compared with valuations placed on 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.

For all of the reasons set forth above, the decision of the Knox County Board of Equalization should be affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Knox County Board of Equalization determining the value of the Subject Property for tax year 2011 is affirmed.
2. The taxable value of the Subject Property for tax year 2011 is \$97,470.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Knox County Treasurer and the Knox 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 Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2011.
7. This Decision and Order is effective for purposes of appeal on January 10, 2014.

Signed and Sealed: January 10, 2014.

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 (2012 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.