

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

TJ 2010 Corporation,
Appellant,

v.

Dawson County Board of Equalization,
Appellee.

Case No: 12C 001

Decision Affirming the Determination of the
Dawson County Board of Equalization

For the Appellant:

Terry L. Jessen,
TJ 2010 Corporation, Pro Se.

For the Appellee:

Kurt McBride,
Deputy Dawson County Attorney.

This appeal was heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel improved with a 74-unit motel located near Interstate 80 in Gothenburg, Dawson County, Nebraska. The legal description of the parcel is found at Exhibit 1. The Property Record Card for the Subject Property is found at Exhibit 2.

II. PROCEDURAL HISTORY

The Dawson County Assessor determined that the assessed value of the Subject Property was \$4,510,230 for tax year 2012. TJ 2010 Corporation (the Taxpayer) protested this assessment to the Dawson County Board of Equalization (the County Board) and requested an assessed valuation of \$2,000,000. The Dawson County Board determined that the taxable value for tax year 2012 was \$4,510,230.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on June 5, 2013. The Commission received the County Board's Final Determination in evidence as Exhibit 1. The Commission also received County Board Exhibits 2 and 3 in evidence, which were exchanged by the parties

¹ E1.

at least 30 days in advance of the hearing, in accordance with the Commission's Order for Hearing. The Taxpayer submitted Exhibits 5 through 12 to the County Board for review on the day of the hearing. Based on the 30-day exchange requirement contained in the Order for Hearing, the Commission sustained the County Board's objection to the inclusion of Exhibits 5 and 6 in evidence. The Taxpayer did not offer Exhibits 7 through 12 into evidence.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.² 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."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

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 Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

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 The County Board need not

² 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).

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).

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.⁸

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.”⁹ 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.”¹⁰

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.¹¹

“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.”¹² “Actual value, market value, and fair market value mean exactly the same thing.”¹³ 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.¹⁴ All real property in Nebraska subject to taxation shall be assessed as of

⁸ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

⁹ Neb. Rev. Stat. §77-5016(8) (2011 Supp.).

¹⁰ Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

¹¹ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹² *Id.*

¹³ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁴ Neb. Rev. Stat. §77-131 (Reissue 2009).

January 1.¹⁵ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁶

B. Summary of the Evidence

Terry L. Jessen, President of TJ2010 Corporation, testified that the valuation determination of the County Board was arbitrary or unreasonable in comparison to other motel properties throughout Nebraska. Jessen asserted an opinion of value in the amount of \$2,800,000.

The Taxpayer did not present an appraisal in support of its opinion of value. The Commission also did not receive actual or market data from the Taxpayer for income approach valuation purposes.

John Phillip Moore, the Dawson County Assessor, testified that the County hired Stanard Appraisal Service to conduct a cost approach valuation of the Subject Property. This \$4,546,446 cost approach valuation of the 44,057 square foot facility, which is the basis of the County Board's valuation determination for tax year 2012, amounts to approximately \$103 per square foot.¹⁷ Moore also testified that a motel facility located in Lexington, which is situated in Dawson County like the Subject Property, recently sold for approximately \$103 per square foot.

C. Analysis

The undisputed testimony before the Commission is that the County Assessor valued the Subject Property using the cost approach, which is a statutorily permissible mass appraisal method.¹⁸ Thus, because the Taxpayer did not submit sufficient evidence to support its opinion of value, the Commission finds that there is not clear and convincing evidence that the County Board's valuation determination is unreasonable or arbitrary for tax year 2012.

¹⁵ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁶ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹⁷ See, E2 and E2:6.

¹⁸ Neb. Rev. Stat. §77-712 (Reissue 2009).

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.”¹⁹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁰ 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.²¹ 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.²²

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.²³ 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.²⁴ The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁵

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].”²⁶ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁷ “To set the valuation of similarly situated property, i.e. comparables, at

¹⁹ *Neb. Const.*, Art. VIII, §1.

²⁰ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²¹ *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).

²² *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²³ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁴ *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).

²⁵ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²⁶ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁷ *Id.* at 673, 94 N.W.2d at 50.

materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”²⁸

B. Summary of the Evidence

As noted above, the Taxpayer asserted that the determination of the County Board was arbitrary or unreasonable in comparison to comparable motel properties throughout Nebraska.

C. Analysis

The Taxpayer did not provide property record cards for the alleged comparable properties. Without property record cards, the Commission cannot evaluate whether equalization principles were violated for tax year 2012. Therefore, the Commission finds that there is not clear and convincing evidence that the valuation of the Subject Property for tax year 2012 is grossly excessive for equalization analysis purposes.

We note that Section 10 of the Commission’s Order for Hearing in this matter provides as follows:

REQUIRED EVIDENCE Each party shall provide as an exhibit:

- a. Copies of the County’s Property Record File for any parcel a party will assert is a comparable parcel.

NOTE: *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 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.

For all of the reasons set forth above, the appeal of the Taxpayer is denied.

²⁸ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Dawson County Board of Equalization determining the value of the Subject Property for tax year 2012 is affirmed.²⁹
2. The assessed value of the subject property for tax year 2012 is \$4,510,230.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Dawson County Treasurer and the Dawson 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 2012.
7. This Decision and Order is effective for purposes of appeal on June 27, 2014.

Signed and Sealed: June 27, 2014.

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 Statutes and Court Rules.

²⁹ 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.