

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Ruth Ann M. Slattery Trust,
Ruth Ann M. Slattery, Trustee,
Appellant,

v.

Saunders County Board of Equalization,
Appellee.

Case No: 14R 050

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

Background

1. The Subject Property consists of Lot 14 of the Willow Point Subdivision in Saunders County, and includes a 1,572 square foot¹ lakeside residence built in 1973. A legal description of the parcel is found in the Case File.
2. The Saunders County Assessor (the County Assessor) assessed the Subject Property at \$192,190, with the land contribution to value at \$125,000 and the improvement contribution to value at \$67,190 for tax year 2014.
3. The Ruth Ann M. Slattery Trust, Ruth Ann M. Slattery, Trustee, (the Taxpayer) protested this assessed value to the Saunders County Board of Equalization (the County Board) and requested a taxable value of \$160,000 for tax year 2014.
4. The County Board determined that the taxable value of the Subject Property was \$192,190 for tax year 2014.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on February 2, 2015, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Alan D. Slattery was present at the hearing for the Taxpayer.
8. Steven J. Twohig, Saunders County Attorney, and Terry Kubik, Appraiser for the Saunders County Assessor, were present for the Saunders County Board of Equalization (the County Board).

¹ This square footage measurement was the result of a recent inspection and was offered by the County Board as a correction at the hearing on this appeal. The Taxpayer did not dispute the corrected measurement.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of January 1.²
10. The Commission's review of the determination of the County Board of Equalization is de novo.³ "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."⁴
11. 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."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
12. 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
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸
14. 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
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁰

Findings of Fact

16. As indicated in a Purchase Agreement, dated January 19, 2011, Alan D. Slattery purchased the Subject Property for \$172,500. According to the same agreement, at paragraph I(c), the purchase price was allocated "for tax and other purposes" as \$157,500

² See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

³ See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

⁴ *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) (2014 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 Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

for real property and \$15,000 for personal property. According to paragraph I(a) of the agreement, the personal property included, “[i]n particular, ... the furnishings (indoor and outdoor), appliances and boat.”

17. The Taxpayer asserted that the actual value of the Subject Property as of January 1, 2014, was \$160,000.
18. Willow Point Subdivision (Willow Point) homes and cabins, including the Subject Property, are located on lakeside lots or are adjacent to the Platte River. The Subject Property is one of the lakeside parcels. The Subject Property has no garage and has no other improvements (buildings) other than the residence.
19. The Taxpayer asserted that the Subject Property was overvalued in comparison to other lakeside parcels which had more lakefront linear feet (hereinafter referred to as shoreline), larger lots, more desirable locations on the lake, garages, finished lower levels, and other amenities.

Land

20. Shoreline at Willow Point generally ranges from 80 feet to 100 feet per lot. After being replatted in 2011, the shoreline of the Subject Property was reduced from 83 feet to 74 feet.
21. The parties both asserted that the land component of every lakeside lot at Willow Point was assessed at \$125,000 for tax year 2014, regardless the size of the lot or its amount of shoreline. Property record files for three other lakeside properties at Willow Point indicated that for each of the three parcels the land component was assessed at \$125,000.¹¹ The property record card for the Subject Property indicated that the land component of the Subject Property was also assessed at \$125,000 for tax year 2014.
22. Terry Kubik explained that, while there were no recent vacant lot sales at Willow Point, in his opinion sales applicable to tax year 2014 indicated a willingness by purchasers to pay \$125,000 for the land component of value regardless the size of the lots or the other differences in lot features that were present at Willow Point, including shoreline.
23. In addition to the differences in the shoreline, the Taxpayer also explained that some of the lots, including the Subject Property, were located on the Platte River dike, and therefore had a significant slope down to the lake. He also described the various lakeside lots as having different sizes of beaches, and varying sizes and locations of lots, including the locations in relation to the sun. The Taxpayer clearly identified these issues but did not quantify any of these differences in terms of market value.
24. While the Subject Property has less shoreline than most of the other lakeside properties at Willow Point, the Commission notes that many differences exist between other properties at Willow Point and the Subject Property, and finds that there is not clear and convincing

¹¹ Partial property record files were provided for the Subject Property, Lot 14, and Lots 1, 23, and 24.

evidence that the land component should have been assessed at an amount less than \$125,000 for tax year 2014.

Improvements (Buildings)

25. The Taxpayer asserted that many differences between the improvements of the Subject Property and the improvements of other lakeside lots were not properly considered in the assessment in terms of equalization. The Subject property has no garage, no finished lower level with a lakeside walkout, and the absence of other amenities that are present at other lakeside lots. The Taxpayer contends that since other lots enjoy more valuable improvements in comparison to the Subject Property, the assessment per square foot of the Subject Property improvements should be less than the other lakeside properties.
26. More specifically, the Taxpayer provided a detailed comparison of the Subject Property and three other lakeside properties: Lot 1, Lot 23, and Lot 24. The property record files for Lots 1, 23, and 24 indicate various significant differences between the improvements on those properties and the Subject Property. The Taxpayer asserted that these differences, including gross living area, finished lower levels, and garages, were not properly considered in the assessment of the Subject Property and that the Subject Property was assessed at a higher amount per square foot of gross living area than the other lakeside properties.
27. In order to compare the assessment attributed to the gross living area of the Subject Property to the assessment attributed to the gross living area of the other lakeside properties, the Commission has isolated the amounts for the assessments of the land, lower level residential space, and any other buildings (including garages) from the amount assessed for the gross living area. The chart below shows a comparison of the assessment per square foot of gross living area of the Subject Property and the residences at Lots 1, 23, and 24:

AV = Assessed Value GLA = Gross Living Area ¹² SF = Square Foot	Subject Property Lot 14	Lot 1	Lot 23	Lot 24
AV of Land	\$125,000	\$125,000	\$125,000	\$125,000
AV of Residence	\$67,190	\$141,670	\$62,270	\$53,770
AV of Garages	\$0	\$30,000 ¹³	\$9,120	\$18,750
GLA of Residence	1,572 SF ¹⁴	2,016 SF	528 SF	700 SF
AV/GLA	\$42.74 ¹⁵	\$70.27 ¹⁶	\$117.94 ¹⁷	\$76.81 ¹⁸

¹² Gross Living Area (GLA) is defined as, “[t]he total area of finished, above-grade residential space excluding unheated areas such as porches and balconies; the standard measure for determining the amount of space in residential properties.” Appraisal Institute, *The Dictionary of Real Estate Appraisal*, at 132 (4th ed. 2002).

¹³ The Taxpayer asserted that this was the assessed value of the oversized 2 stall garage on this Lot. This amount was not disputed by the County Board. The Taxpayer did not assert that the garages of the other lakeside properties were underassessed.

¹⁴ Before the GLA correction was made prior to the hearing on this appeal, the AV/GLA for the Subject Property was \$56.37 (\$67,190 / 1,192 SF).

¹⁵ \$67,190 / 1,572 SF = \$42.74/SF

28. The Taxpayer asserts that, with a lakeside residence, the lower level living area with a walkout to the lake has a use more comparable to GLA. The assessments of the lakeside lots at Willow Point do not include such lower level square footage as part of the GLA.¹⁹ Typically, basement square footage, not being included as GLA, is assigned a value per square foot, but that value is significantly less than the per square foot value of the GLA of the same improvement. The property record cards for Lots 1, 23, and 24 do not include the square footage of the lower levels as part of the GLA, but they also do not indicate what value, if any, was assessed for the lower level square footage of each comparable. Neither party provided any detail regarding the value of the lower level square footage for any of the comparable properties. Without such detail, the Commission is unable to properly compare the properties for purposes of equalization.
29. As explained above in Footnote 1, the County Assessor made a correction to the GLA measurement of the Subject Property from 1,192 square feet to 1,572 square feet as the result of a recent inspection, and the Taxpayer did not dispute the corrected measurement at the hearing. Kubik explained that with the GLA correction, the County Assessor's opinion of value of the Subject Property improvements for tax year 2014 would increase from \$67,190 to \$84,720, resulting in a total taxable value of the parcel of \$209,720. However, the Commission may not order an increase in taxable value for a given year from the highest taxable value for which notice was given to the Taxpayer for that year.²⁰ In the present case, there is no evidence that the Taxpayer was given notice of any taxable value higher than \$192,190 for tax year 2014. Therefore, the Commission finds that it cannot set the taxable value of the Subject Property at any amount higher than previously noticed.
30. The Commission finds that the assessed value per square feet of gross living area of the Subject Property is substantially lower than the assessed value per square feet of gross living area of each of the other lakeside properties at Lots 1, 23, and 24.
31. Based upon the assessed value per square feet of gross living area comparisons shown in the chart above, there is not clear and convincing evidence that the assessed value of the Subject Property improvements is arbitrary or unreasonable.

¹⁶ \$141,670 / 2,016 SF = \$70.27/SF

¹⁷ \$62,270 / 528 SF = \$117.94/SF

¹⁸ \$53,770 / 700 SF = \$76.81/SF

¹⁹ For Lot 1, the property record file shows 2,016 square feet as "crawl area." The property record file for Lot 23 indicates 528 square feet of "Total Basement Area," which is also listed as "Partition Finish Area." For Lot 24, the property record file shows 520 square feet of "Total Basement Area," of which 468 square feet is listed as "Partition Finish Area."

²⁰ The Commission's Rules and Regulations do not allow the Commission to set taxable value of real property at any amount higher than previously noticed to the Taxpayer by the County Assessor, the County Board, or the Property Tax Administrator without specific notice from the opposing party prior to the hearing that the opposing party intends to offer evidence and assert that the taxable value for the Subject Property is higher than any previously noticed value. Title 442, Neb. Admin. Code ch 5 §016.02A (6/11)

Conclusions of Law

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 clear and convincing evidence that the determination of taxable value by the County Board is arbitrary or unreasonable. The determination by the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The decision by the County Board determining the taxable value of the Subject Property for tax year 2014 is affirmed.
2. The taxable value of the Subject Property for tax year 2014 is \$192,190.
3. This Decision and Order, if no further action is taken, shall be certified to the Saunders County Treasurer and the Saunders County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 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 2014.
7. This Decision and Order is effective on June 19, 2015.

Signed and Sealed: June 19, 2015

Robert W. Hotz, Commissioner