

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Ron Reilly,
Appellant,

v.

Platte County Board of Equalization,
Appellee.

Case No: 16R 0026

Decision and Order Affirming Platte
County Board of Equalization

Background

1. The Subject Property is a residential parcel improved with a 1,976 square foot single family dwelling, with a legal description of: Lot 18 Stires Lake Addition, Platte County Nebraska.
2. The Platte County Assessor (the County Assessor) assessed the Subject Property at \$144,525 for tax year 2016.
3. The Taxpayer protested this value to the Platte County Board of Equalization (the County Board) and requested an assessed value of \$119,525 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$144,525 for tax year 2016.
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 July 6, 2017, at The Ramada Columbus & Rivers Edge Convention Center, 265 33rd Avenue, Columbus Nebraska, before Commissioner Nancy J Salmon.
7. Ron Reilly was present at the hearing on behalf of the Taxpayer.
8. Thomas Placzek, Platte County Assessor and Elizabeth Lay, Platte Deputy County Attorney were present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission's review of the determination of the County Board of Equalization is de novo.²

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

² See, Neb. Rev. Stat. §77-5016(8) (2016 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).

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.”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
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.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
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.⁷
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The Taxpayer is the owner in fee simple of a lot situated on Stires Lake in Platte County. A residential home is situated on the premises, but the Taxpayer does not dispute the value placed on the structure by the County Assessor. Instead his complaint is that the land aspect of the lot is unequalized with other lots on the lake. The Taxpayer’s lot is valued at \$50,000. Some lots in the Stires Lake area are subject to long-term leases. Most of these lots also have residential homes situated on them. The lots which are subject to leases are assessed, for tax purposes, at \$20,000. Because of the differences in valuation, the Taxpayer seeks to have the assessed value of his lot reduced.
17. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that no one part is compelled to pay a disproportionate share of the tax. Where it is impossible to secure both the standards of the true value of a property for taxation and the uniformity and equality required by law, the latter requirement is to

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(9) (2016 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 Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

be preferred as the just and ultimate purpose of the law. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. However, the burden is on the taxpayer to show by clear and convincing evidence that the valuation placed on other *similar* property is grossly excessive. (Emphasis added). *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb. App. 582, 597 N.W.2d 623 (1999).

18. Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than actual value. *Equitable Life v. Lincoln County Bd. of Equalization*, 229 Neb. 60, 425 N.W.2d 320 (1988).
19. The ultimate issue before the Commission is whether equalization is accomplished by valuing the effect of long term leases at a lower value than fee simple ownership. In other words, do leased fee estates affect the actual fair market value? The leased fee estate is an ownership interest held by the landlord (lessor) who is transferring specified rights, such as the right to use and occupancy, to the lessee.
20. The County Assessor has adopted a process where fee simple lots are assessed at \$50,000 and leasehold lots are assessed at \$20,000. The Assessor then increases the assessment on the lot improvements by 10% to account for the difference in lot valuation. It is clear to the Commission that such lots are not similar because of the existence of long term leases on the leasehold lots. Based upon the submitted information provided by the Taxpayer and the County Assessor, the Commission finds that the process utilized by the Assessor is not arbitrary or unreasonable. Clearly, a prospective purchaser of a lot would not pay the same amount to purchase the lot for a lot subject to a long term lease as he or she would for a lot unencumbered by a lease.
21. 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.
22. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2016, is Affirmed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$ 50,000
<u>Improvements</u>	<u>\$ 94,525</u>
Total	\$144,525

3. This Decision and Order, if no further action is taken, shall be certified to the Platte County Treasurer and the Platte County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 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 2016.
7. This Decision and Order is effective on July 21, 2017.

Signed and Sealed: July 21, 2017

Nancy J Salmon, Commissioner