

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jayne M. Kring,
Appellant,

v.

Kearney County Board of Equalization,
Appellee.

Case No: 16R 0027

Decision and Order Reversing the Decision
of the Kearney County Board of
Equalization

For the Appellant:

Jayne M. Kring,
Pro Se

For the Appellee:

Bryan McQuay
Deputy Kearney County Attorney

This appeal was heard before Commissioners Robert W. Hotz and James D. Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in the city of Axtell in Kearney County. The parcel is improved with a 1,400 square foot home. 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 Kearney County Assessor determined that the assessed value of the Subject Property was \$200,415 for tax year 2016. Jayne M. Kring (the Taxpayer) protested this assessment to the Kearney County Board of Equalization (the County Board) and requested an assessed valuation of \$179,030. The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$200,415.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits 1 to 7, as ordered by the Commission. Exhibit 8 was delivered by the Taxpayer after the date ordered by

¹ Exhibit 1.

the Commission, but was admitted over the County Board's objection upon good cause shown.² The Commission held a hearing on October 24, 2017.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.³ 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."⁴

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.⁵

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.⁶ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁸ 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.⁹

² See, 442 NAC Chapter 5, Section 020.10D.

³ 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).

⁴ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁵ *Id.*

⁶ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁸ 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).

⁹ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

IV. APPLICABLE 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.¹⁰

“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.”¹¹ “Actual value, market value, and fair market value mean exactly the same thing.”¹² 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.¹³ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁴ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁵

“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.”¹⁶ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁷ 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.¹⁸ In order to determine a proportionate valuation, a comparison of the ratio of assessed value to

¹⁰ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹¹ *Id.*

¹² *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹³ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁴ See Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁵ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹⁶ *Neb. Const.*, Art. VIII, §1.

¹⁷ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹⁸ *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).

market value for both the Subject Property and comparable property is required.¹⁹ Uniformity requires that, whatever methods are used to determine actual or taxable value for various classifications of real property, the results be correlated to show uniformity.²⁰ 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.²¹ The constitutional requirement of uniformity in taxation extends to both rate and valuation.²² 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].”²³ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁴

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 [and] may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”²⁵ 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.”²⁶ The Commission’s Decision and Order shall include findings of fact and conclusions of law.²⁷

V. FINDINGS OF FACT

Ron Elliot, an Appraiser hired by the Assessor, testified on behalf of the County Board. According to Mr. Elliot, the Assessor utilized a cost approach for tax year 2015, and then added 30% to the Replacement Cost New (RCN) in order to reach an assessed value of the Subject Property for tax year 2016. The 30% increase to the RCN was applied to all improved

¹⁹ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²⁰ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²¹ *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).

²² *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²³ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁴ *Id.* at 673, 94 N.W.2d at 50.

²⁵ Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

²⁶ Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

²⁷ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

residential properties in Axtell, Nebraska with an average condition rating. The reason for the 30% adjustment was to keep the assessed to sale ratio of Axtell residential properties within the permissible range of 92% to 100% for tax year 2016.²⁸ According to the Property Record Card, the Subject Property is a 1,400 square foot residence, built in 1996, rated by the Assessor as average quality and average condition, and with a physical depreciation of 16%.²⁹ Mr. Elliot testified that all of the residential properties in Axtell were assessed as being in the same market area and only one model was used to assess them utilizing a computer-assisted mass appraisal (CAMA) system.

Jayne Kring testified that the assessed value of the Subject Property was not equalized with other residential properties in Axtell. Ms. Kring focused specifically on the amount of depreciation discounted from the replacement cost new. She provided Property Record Cards for multiple residential properties.³⁰ The Commission has reviewed all of the evidence that was received at the hearing.

Including the Subject Property, the record includes five residential parcels in Axtell that were rated as average condition and average quality as shown below.

	Square Feet	Quality/Condition	Effective Age	Depreciation
Subject Property	1,400	Average/Average	20	16%
Exhibit 7:10	1,400	Average/Average	23	24%
Exhibit 7:28	2,048	Average/Average	41	32%
Exhibit 7:31	1,424	Average/Average	35	27%
Exhibit 8:2	1,540	Average/Average	20	28%

²⁸ See, 2016 Reports & Opinions of the Property Tax Administrator, Kearney County at https://terc.nebraska.gov/sites/terc.nebraska.gov/files/doc/r_o_Kearney.pdf.

²⁹ Exhibit 2:2.

³⁰ See, Exhibit 7 and Exhibit 8.

Two of these properties were substantially older (and one of the two much larger) than the Subject Property and would therefore not be considered comparable.³¹ The other two properties were comparable to the Subject Property for purposes of equalization since they were of the same quality and condition, and were of similar age size and age.³²

Based upon this review of the evidence, it is clear that the comparable properties have depreciation adjustments that are substantially greater than the depreciation adjustment for the Subject Property even though the quality, condition, size, and age are comparable.

Therefore, we find that the depreciation adjustment for the Subject Property should have been the same as the depreciation adjustment for the property that had the same quality, condition, and age, and comparable size.³³ In order to determine the equalized value of the Subject Property for tax year 2016, the Commission will apply a 28% depreciation to the RCN. We find that the resulting equalized value of the improvement component of the Subject Property should be \$168,397.³⁴

VI. CONCLUSIONS OF LAW

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.

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

³¹ See Exhibit 7:28 and Exhibit 7:31.

³² See Exhibit 7:10 and Exhibit 8:2.

³³ See Exhibit 8:2.

³⁴ See Exhibit 2:2: Depreciation = Total RCN \$179,425 x 28% = \$50,239. Total RCN \$179,425 – Depreciation \$50,239 = RCNLD \$129,186. RCNLD \$129,186 + Outbuilding \$350 = Total Value \$129,536. Total Value \$129,536 x 30% increase = \$168,397. RCNLD = Replacement Cost New Less Depreciation.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Kearney County Board of Equalization determining the taxable value of the Subject Property for tax year 2016 is vacated and reversed.³⁵
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$ 4,030
<u>Improvement</u>	<u>\$168,397</u>
Total	\$172,427
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Kearney County Treasurer and the Kearney 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 for purposes of appeal on November 1, 2017.³⁶

Signed and Sealed: November 1, 2017

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.

³⁵ Taxable 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.

³⁶ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.