

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Barbara J. Limbach,
Appellant,

v.

Dawes County Board of Equalization,
Appellee.

Case No: 16R 0212

Decision and Order Reversing the
Dawes County Board of Equalization

Background

1. The Subject Property is a 2,148 square foot single family residence, with a legal description of: Block 14, Lot 11 & 12 Addition Paddocks, Crawford, Dawes County, Nebraska.
2. The Dawes County Assessor (the County Assessor) assessed the Subject Property at \$191,720 for tax year 2016.
3. The Taxpayer protested this value to the Dawes County Board of Equalization (the County Board) and requested an assessed value of \$155,937 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$191,720 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 May 24, 2017, at Hampton Inn & Suites Hotel and Conference Center, 301 W. Hwy 26, Scotts Bluff, Nebraska, before Commissioner Steven A. Keetle.
7. Barbara J. Limbach was present at the hearing (Taxpayer).
8. Adam Edmund, Deputy Dawes County Attorney was 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
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

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).

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
16. One of the issues before the Commission in his case involves the question of whether or not the Taxpayer’s property has been equalized with other comparable properties in Dawes County
17. 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.”⁹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁰ 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.¹¹ 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.¹² 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.¹³ Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is

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.).

⁹ *Neb. Const., Art VIII, Section 1*

¹⁰ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹¹ *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).

¹² *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

¹³ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

assessed at less than the actual value.¹⁴ The constitutional requirement of uniformity in taxation extends to both rate and valuation.¹⁵ 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].”¹⁶ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.¹⁷

Findings of Fact & Conclusions of Law

18. The Taxpayer alleged that the Subject Property was assessed differently than other comparable properties in Dawes County.
19. The Subject Property is located in the City of Crawford.
20. For tax year 2016, all residential property located in the City of Crawford received an 11% increase in their assessed values from their 2015 assessed values.
21. The Taxpayer added a wood deck to the Subject Property in 2015 which appeared on the Property Record File of the subject property in 2016.
22. The Taxpayer indicated that there were no other improvements or changes to the Subject Property for tax year 2016.
23. In addition to the wood deck, the Property Record File (PRF) for the Subject Property lists other Miscellaneous Improvements (or Dwelling Data): carpet and pad, ceramic tile, Single 1-story fireplace, raised slab porch with roof and Deck, synthetic wood, adding an additional \$41,195 to the total RCN for the Subject Property.
24. The Taxpayer presented several 2016 tax year PRF’s for residential properties located in the City of Crawford that listed Miscellaneous Improvements (or Dwelling Data), for which no value was added to the assessment calculation for these properties.
25. The Taxpayer presented information regarding multiple years of building permits issued by the City of Crawford and the improvements that were made to the properties as indicated in these permits.
26. The Taxpayer presented information regarding the assessments of multiple residential properties that had obtained building permits from the City of Crawford, some of these properties had value indicated for Miscellaneous Improvements (or Dwelling Data) others did not. Additionally some of these properties that had the new improvements for which the building permits were obtained listed as Miscellaneous Improvements (or Dwelling Data) for the property and some did not.

¹⁴ *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).

¹⁵ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

¹⁶ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹⁷ *Id.* at 673, 94 N.W.2d at 50.

27. No explanation was offered for these differences in assessment calculations contained in the information presented to the Commission.¹⁸
28. From the information presented to it, the Commission determines the Subject Property is being assessed for Miscellaneous Improvements (or Dwelling Data) where other comparable property is not.
29. Additionally the Commission determines that the Subject Property is being assessed for the value of the wood deck added in 2015 while other properties which obtained building permits and made similar improvements have not been assessed for the value of those improvements.
30. The Taxpayer alleged that the Quality rating of the Subject Property was too high when compared to other properties in Dawes County.
31. The Taxpayer did not offer any information which demonstrated that the Quality rating of the Subject Property was incorrect.
32. Based on all of the information presented to it, the Commission determines that the equalized value of the Subject Property for 2016 is: \$147,802.¹⁹
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].”²⁰
34. Based upon a comparison of the assessments of the residential properties in the City of Crawford described above, the Commission finds that the Taxpayer has met her burden of persuasion.
35. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
36. The Taxpayer has 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 vacated.

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 Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2016 is: \$147,802

¹⁸ See, *Leech, Inc. v. Bd. Of Equal.*, 176 Neb. 841, 846, 127 N.W.2d 917, 921 (1964), *Kawasaki Motors Corp. v. Lancaster County Bd. of Equalization*, 7 Neb.App. 655, 658, 584 N.W.2d 63, 66 (1998).

¹⁹ 2015 Assessed value \$133,155 x 11% = \$14,647, \$133,155 + \$14,647 = \$147,802.

²⁰ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

3. This Decision and Order, if no further action is taken, shall be certified to the Dawes County Treasurer and the Dawes 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 August 17, 2017.

Signed and Sealed: August 17, 2017

Steven A. Keetle, Commissioner