

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jayne M. Kring,
Appellant,

v.

Kearney County Board of Equalization,
Appellee.

Case No: 18R 0071

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

For the Appellant:
Jayne M. Kring,
Pro Se

For the Appellee:
Melodie Bellamy,
Kearney County Attorney

This appeal was heard before Commissioners Steven Keetle and James Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in Kearney County, Nebraska. The parcel is improved with a 1,400 square foot one story single family residence. The legal description and property record card for the Subject Property are found at Exhibit 8 page 1.

II. PROCEDURAL HISTORY

The Kearney County Assessor determined that the assessed value of the Subject Property was \$200,415 for tax year 2018. Jayne M. Kring (the Taxpayer) protested this assessment to the Kearney County Board of Equalization (the County Board) and requested an assessed valuation of \$172,427. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$200,415.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on July 3, 2019, with Commissioner Steven Keetle presiding. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The parties

¹ E1.

stipulated to the receipt of exchanged exhibits 1-3 and 7-15, 17 and 18; exhibits 4-6 and 16 were not received on objections by the County Board.

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 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

The 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 put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes the County Board's valuation was unreasonable or arbitrary.⁸

² Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

³ *Brenner* at 283, 811 (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. 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 Equal. of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

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

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 The Commission's Decision and Order shall include findings of fact and conclusions of law.¹¹

IV. APPLICABLE LAW

A. Law

Under Nebraska law,

Actual 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.¹²

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 Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.¹³ Actual value, market value, and fair market value mean exactly the same thing.¹⁴ Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.¹⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷

⁹ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹⁰ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹³ *Id.*

¹⁴ *Omaha Country Club* at 180, 829 (2002).

¹⁵ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁶ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁷ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

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 the Nebraska Constitution.¹⁸ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁹ 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.²⁰ 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.²¹ 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.²² 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.²³ The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁴ 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.²⁵ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁶

V. FINDINGS OF FACT AND ANALYSIS

The Taxpayer alleged that the quality and condition ratings utilized by the County Assessor when determining the value of the Subject Property did not reflect the actual quality and condition of the Subject Property, and that the assessed value of the Subject Property was not equalized with other residential properties in Axtell.

¹⁸ *Neb. Const.*, Art. VIII, § 1.

¹⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁰ *Id.*; *Cabela's Inc. v. Cheyenne County Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

²¹ *Cabela's Inc.* at 582, 623.

²² *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²³ *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).

²⁴ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²⁵ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁶ *Id.* at 673, 94 N.W.2d at 50.

The Taxpayer testified regarding the condition of the Subject Property and offered photographs of the exterior and interior of the Subject Property.²⁷ The County Board argued that the Taxpayer did not raise the issue of condition at the hearing before the County Board and that therefore the Commission could not consider the condition of the Subject Property. As noted earlier, when the issue before the Commission is the taxable value of property, the Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.²⁸ However, the Commission finds and determines that the Taxpayer did not present evidence to demonstrate that the County Assessor's determination of quality and condition for the Subject Property was unreasonable or arbitrary.

Ron Elliott, an appraiser hired by the County Assessor, testified regarding the assessments of residential properties in Kearney County. Elliott testified that he inspected all of the residential parcels in Axtell and set their characteristics for the 2014 assessments in Kearney County. In addition, Elliott created the depreciation table used for determining the depreciation applied to residential property in Axtell for the 2014 assessments. The depreciation percentages utilized by Kearney County in 2018 are the same depreciation percentages set in 2014 and have not changed based on the actual ages of the residential parcels in Axtell. Elliott testified that in 2016 the County Assessor applied a 30% increase to the total assessed values of all residential parcels in Axtell and that the assessed values determined in 2014 with the 30% adjustment are the assessed values being applied for the 2018 assessment year. Elliott testified that any changes to the assessed values for residential parcels in Axtell after the 30% increase in 2016 would have been the result of pick up work by the County Assessor's office or changes in the characteristics of the properties.

The Taxpayer's allegations regarding the equalization of assessments focus on the amount of depreciation applied to the replacement cost new for residential parcels in Axtell. The Taxpayer further alleges that assessed values for residential parcels in Axtell were not determined using the valuation model described by Elliott. Portions of Property Record Files (PRF) for multiple residential parcels located in Axtell were presented to the Commission.²⁹ The Commission has reviewed all of the evidence received at the hearing and determined that there are two residential

²⁷ E3, E18.

²⁸ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

²⁹ See E8, E9, E14, E17.

parcels located in Axtell that were constructed in 1996: the Subject Property and the property located at 409 4th Ave (the Fourth Avenue Property). The record regarding the characteristics and resulting assessments of those two parcels is inconsistent and confusing. The County Board offered one page of the PRF for the Subject Property which showed a condition rating of “2.5 – Badly Worn plus 0.50” with an assessed value of \$196,385 for the improvements on the Subject Property.³⁰ The Taxpayer offered one page of the PRF for the Subject Property which showed a condition rating of “3.00 – Average” with an assessed value of \$196,385.³¹ Elliott testified that for the 2018 tax year the quality and condition for the Subject Property were both average. The depreciation applied in the calculation of the improvement value remains 16% no matter what the condition rating is.

The County Board offered an exhibit that contained two different versions of the same page of the PRF of the Fourth Avenue Property. Both of these pages showed the condition rating of “2.80 – Badly worn plus 0.80” but one page had an improvement value of \$200,195 and the other had an improvement value of \$178,105 with the apparent difference being the addition of a new garage and the renovation of the old garage into living space some time in 2018.³² The Taxpayer also offered an exhibit that contained two different versions of the same page of the PRF of the Fourth Avenue Property. One of these pages shows a condition rating of “3.00 – Average” and one shows a condition rating of “2.80 – Badly worn plus 0.80” but here the page with the higher condition rating shows a value of \$178,105, while the lower one shows an improvement value of \$196,385 (which should be \$178,105).³³ The depreciation applied in the calculation of the improvement value remains 28% no matter what the condition rating is, both before and after the renovation and addition. The Taxpayer asserts that the page showing a condition rating of “3.00 – Average” for the Fourth Avenue Property was obtained from the County Assessor’s office in preparation for her 2018 protest hearing before the County Board on July 10, 2018. The Taxpayer further asserts that that after being informed of the denial of her protest she obtained the second page showing a condition rating of “2.80 – Badly worn plus

³⁰ E8:1.

³¹ E14:1 and E17:1.

³² E9:1, 9:5.

³³ E17:30 & E17:32. The Commission notes that the math shown for the final calculation is:

$$\begin{array}{r} \$137,005 \\ \times 1.3 \\ \hline \$196,385 \end{array}$$

However, the result of $\$137,005 \times 1.3$ should be \$178,105.

0.80” but with the same value calculation numbers.³⁴ A page of the PRF of the Fourth Avenue Property also contains a note that states “16 – 30% stat. chng.; CBOE action (assessor Value: land 9645; imp 207,530; total 217,175”;³⁵ \$217,175 being a total value which shows up nowhere else in the record before the Commission.

The Taxpayer asserts her frustration with the assessment and protest process she has experienced and alleges that it is arbitrary, and the Commission agrees. Elliott testified that the valuation methodology, including the depreciation to be applied, for residential properties in Axtell was set in 2014 and that the only change to this methodology was the implementation of a 30% increase to total valuation in 2016. No additional depreciation was applied to residential properties after 2014, meaning that without some change in the characteristics of a property its value would be the same for tax years 2016, 2017 and 2018. This methodology appears to have been followed when assessing the Subject Property, when it had a condition rating of “3.0 – Average.” According to the depreciation chart for Kearney County developed in 2014, a property constructed in 1996 with a condition of average should have received 16% depreciation, and this was done when the Subject Property had a condition rating of “3.0 – Average.” However, when the condition rating is changed to “2.5 – Badly Worn plus 0.50” the County’s valuation model did not change the depreciation amount, leaving it at 16%. The opposite is true of the Fourth Avenue Property; this property was also constructed in 1996 and had a condition rating of “3.0 – Average” but was receiving 28% depreciation, the amount of depreciation an average condition property should have been receiving if it were constructed in 1984, not 1996.³⁶ After County Board action in 2016 the condition rating of the Fourth Avenue Property was adjusted to “2.80 – Badly worn plus 0.80” in what appears from the record to be an attempt to match condition rating to the higher depreciation amount. However, the depreciation amount and the value of the improvements *did not change* as a result of the adjusted condition rating. If changing the condition rating does not change the depreciation applied or the value of the improvements as determined by the county’s assessment model for the two properties constructed in 1996, the record indicates a lack of uniformity in the assessments of the Subject Property and the Fourth Avenue Property. Uniformity requires that whatever methods are used to determine actual or

³⁴ Assuming the improvement value remained at \$178,105 rather than increasing to \$196,385 after the reduction in the condition rating for the Fourth Avenue Property.

³⁵ E17:31.

³⁶ See E11.

taxable value for various classifications of real property that the results be correlated to show uniformity.³⁷ The Taxpayer has established that the valuation placed on 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.³⁸

Based on the record before it, the Commission finds that the remedy is to apply the same depreciation adjustment to the Subject Property that was applied to the Fourth Avenue Property. Applying depreciation of 28% to the Replacement Cost New of the improvement component of the Subject Property would result in an equalized value of \$168,397.³⁹ The Commission finds and determines that when this equalized improvement value is added to the land value of \$4,030,⁴⁰ the total equalized value of the Subject Property for tax year 2018 is \$172,427.

VI. CONCLUSION

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 is vacated and reversed.

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 2018 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2018 is:

³⁷ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³⁸ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³⁹ See Exhibit 17:1 (which shows condition rating of "3.0 – Average"): Depreciation = Total RCN \$179,425 x 28% = \$50,239. Total RCN \$179,425 – Depreciation \$50,239 = Replacement Cost New Less Depreciation (RCNLD) \$129,186. RCNLD \$129,186 + Outbuilding \$350 = Total Value \$129,536. Total Value \$129,536 x 30% increase = \$168,397.

⁴⁰ See E14:1.

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 (Reissue 2018).
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 2018.
7. This Decision and Order is effective for purposes of appeal on January 20, 2021.⁴¹

Signed and Sealed: January 20, 2021

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner

⁴¹ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.