

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Theresa A. Perry,
Appellant,

v.

Stanton County Board of Equalization,
Appellee.

Case No: 11R 254

Decision Affirming
County Board of Equalization

BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a residential parcel located at 312 Kimberly Way, Norfolk, Nebraska, with a legal description of: LOT #8 WOODLAND PARK 5TH DEVELOPMENT.
2. The Stanton County Assessor assessed the Subject Property at \$78,240 for tax year 2011.
3. Theresa A. Perry (herein referred to as the “Taxpayer”) protested this value to the Stanton County Board of Equalization (herein referred to as the “County Board”) and requested an assessed valuation in the amount of \$62,000 for tax year 2011.
4. The County Board determined that the assessed value of the Subject Property was \$78,240 for tax year 2011.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
6. A Single Commissioner hearing was held at the Holiday Inn Express & Suite, 920 South 20th Street, Norfolk, Nebraska, before Commissioner Thomas D. Freimuth.
7. Theresa A. Perry was present at the hearing.
8. Cheryl Wolverton, the Stanton County Assessor, and Debra Hoehne, the Deputy Assessor, were present for the County Board.

STANDARD OF REVIEW & APPLICABLE LAW

9. The Commission’s review of the determination of the County Board of Equalization is de novo.¹ “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.”²
10. 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. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

² *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

11. 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
12. “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.”⁶ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁷ 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.⁸
13. 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.⁹
14. 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.¹⁰ 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.¹¹
15. The constitutional requirement of uniformity in taxation extends to both rate and valuation.¹² 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].”¹³ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”¹⁴

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(8) (2012 Cum. Supp.).

⁶ *Neb. Const.*, Art. VIII, §1.

⁷ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

⁸ *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).

⁹ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

¹⁰ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹¹ *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).

¹² *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

¹³ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹⁴ *Id.* at 673, 94 N.W.2d at 50.

16. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”¹⁵
17. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁶
18. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.¹⁷

VALUATION ANALYSIS

19. The 2011 Property Record Card submitted by the County at the hearing before the Commission does not set forth a sales history for the Subject Property.
20. The Property Record Card indicates that the assessment on the Subject Property was increased from \$45,505 in 2003 to \$67,990 in 2004 and then reduced to \$54,475 in 2005. The Property Record Card also indicates that the assessment on the Subject Property was increased from \$54,475 in 2008 to \$71,370 in 2009 and then to \$78,240 in 2011.
21. The Taxpayer asserted that the actual value of the Subject Property was less than its 2011 assessed value because area homes had recently sold for less than assessed value. In support of this assertion, the Taxpayer submitted a Real Estate Transfer Statement (Form 521) regarding the \$62,000 sale of the parcel located at 203 Meadow Lane on October 24, 2010.
22. The Taxpayer asserted that the actual value of the Subject Property did not exceed \$62,000 for tax year 2011 because the 203 Meadow Lane parcel is in the same development (Woodland Park) as the Subject Property, and because it is superior to the Subject Property in terms of size (1,006 sq. ft. vs. 768 sq. ft.). The Taxpayer also asserted that the 203 Meadow Lane parcel was superior to the Subject Property for 2011 tax year purposes because it was owner-occupied, while the Subject Property was a rental.¹⁸
23. The Taxpayer further asserted that a home near the Subject Property sold for \$59,000 near the assessment date in this case, which is January 1, 2011. The Taxpayer, however, did not present a Property Record Card for this \$59,000 sale, so the Commission is unable to consider this transaction.
24. The County supplied the Commission with a packet of information in an attempt to respond to the concerns of the Taxpayer. The packet includes a spreadsheet that sets forth four sales of homes substantially similar to the Subject Property in the two-year County look-back period preceding the 2011 assessment date. These transactions, all of which occurred in Woodland Park, involved sales prices amounting to \$75,000, \$88,500, \$88,780 and \$89,950.

¹⁵ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

¹⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁷ 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).

¹⁸ The 2011 Property Record Card submitted by the County at the hearing indicates that the condition of the Subject Property was lowered to “fair” based on a visual inspection in 2006 and recognition of “rental” status.

25. The County's spreadsheet also sets forth the assessments of four substantially similar homes near the Subject Property in Woodland Park. These 2011 assessments amounted to \$72,780, \$74,335, \$76,525 and \$80,145.
26. Based on a review of the County's spreadsheet, the Commission finds that \$62,000 sale of the 203 Meadow Lane parcel does not by itself constitute clear and convincing evidence that the County Board's \$78,240 assessment for 2011 tax year was unreasonable or arbitrary for actual value purposes.
27. Finally, under the "rule of 72," dividing 72 by a fixed compounded rate of return calculates the amount of time necessary for an asset to double in value (e.g., a \$42,530 asset that appreciates at a 7.2% compounded annual rate of return will double in value to \$85,060 in 10 years).¹⁹ The Property Record Profile submitted by the County Board at the hearing indicates that the Subject Property's assessed value in 2001 was \$42,530, and that the assessment nearly doubled from \$42,530 in 2001 to \$78,240 in 2011, which amounts to a 6.3% compounded annual rate of assessed value increase from 2001 to 2011. The Commission notes that the assessed value of the Subject Property has increased in excess of historical real estate appreciation trends through and beyond the economic crisis. The Commission also notes, however, that the evidence is not clear regarding the condition history of the Subject Property since 2001, and that the rapid increase in the assessed valuation could stem from improvements or other factors since that time.

EQUALIZATION ANALYSIS

28. 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
29. The Taxpayer asserts that the Subject Property should be equalized with 203 Meadow Lane parcel. The testimony and documentation submitted at the hearing, however, indicated that the buyer of this parcel did not object to the \$85,145 assessment of the 203 Meadow Lane parcel for tax year 2011 in part due to improvements subsequent to purchase. Therefore, because the 203 Meadow Lane parcel was assessed at an amount higher than the Subject Property for tax year 2011, equalization would not give the Taxpayer relief.
30. The County's spreadsheet sets forth the assessments of eight homes in Woodland Park that are substantially similar to the Subject Property. These 2011 assessments amounted to \$72,780, \$74,335, \$75,995, \$76,525, \$79,005, \$80,145, \$82,815, and \$86,665. Based on this spreadsheet, the Commission finds that there is not sufficient clear and convincing evidence that the County Board's \$78,240 valuation of the Subject Property for tax year 2011 is arbitrary or unreasonable for equalization purposes.
31. 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.

¹⁹ *The Dictionary of Real Estate Appraisal*, 4th Edition, Appraisal Institute, 2002, at p. 253.

²⁰ *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, 635 (1999).

32. The Taxpayer has not adduced sufficient clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Stanton County Board of Equalization determining the value of the Subject Property for tax year 2011 is Affirmed.
2. That the taxable value of the Subject Property for tax year 2011 is \$78,240.
3. This decision and order, if no further action is taken, shall be certified to the Stanton County Treasurer and the Stanton County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2011.
7. This order is effective on October 8, 2013.

Signed and Sealed: October 8, 2013.

Thomas D. Freimuth., Commissioner