

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gale D. Larsen,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 12R 877

Decision and Order Affirming the
Determination of the Lancaster
County Board of Equalization

1. A Single Commissioner hearing was held on March 11, 2014, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Salmon.
2. Gale D. & Pamela Beth Larsen (the Taxpayers) were present at the hearing.
3. Jeff Johnson, Appraiser for the Lancaster County Assessor's Office, was present for the Lancaster County Board of Equalization (the County).
4. The Subject Property (Subject Property) is a rural residential parcel improved with a 1,336 square foot dwelling and 1,440 square foot farm utility building, with a legal description of: Lot 8, S ½ SE ¼ Stockwell, Lancaster County, Nebraska.

Background

5. The Lancaster County Assessor assessed the Subject Property at \$137,700 for tax year 2012.
6. The Taxpayer protested this value to the Lancaster County Board of Equalization.
7. The Lancaster County Board of Equalization determined that the assessed value of the Subject Property was \$129,600 for tax year 2012.
8. The Taxpayer appealed the determination of the County to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

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

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).

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 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. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. 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
14. “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.”⁸ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁹ 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.¹⁰
15. 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.¹¹ Uniformity requires that whatever methods are used to determine actual or

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

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 *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. Const.*, Art. VIII, §1.

⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹⁰ *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).

¹¹ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

taxable value for various classifications of real property that the results be correlated to show uniformity.¹²

16. 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.¹³ The constitutional requirement of uniformity in taxation extends to both rate and valuation.¹⁴ 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].”¹⁵ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”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.”¹⁷
17. The Taxpayers asserted that the increase in assessed value from tax year 2011 to 2012 was unreasonable and excessive..
18. The Commission notes that the assessed value of the Subject Property increased from \$96,000 in 2011 to \$129,600 in 2012.¹⁸
19. The assessed value for real property may be different from year to year, dependent upon the circumstances.¹⁹ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.²⁰
20. The Commission finds that the mere fact that the Subject Property’s assessed value increased from a previous year is not clear and convincing evidence that the County Board’s determination was unreasonable or arbitrary.
21. The Taxpayers asserted that the County Assessor had errantly assigned the Subject Property a CDU (condition, desirability, utility) rating of average, but that the actual CDU rating should be lower. They asserted that the foundation had cracks and there were cracks in the wall.
22. The Appraiser offered to inspect the Subject Property, with the Taxpayer’s permission, to potentially adjust his opinion of the Subject Property’s CDU. He asserted that if, on inspection, he determined that the Subject Property’s CDU should be lower, then he

¹² *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹³ *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).

¹⁴ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

¹⁵ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹⁶ *Id.* at 673, 94 N.W.2d at 50.

¹⁷ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

¹⁸ See, Subject Property’s property record card.

¹⁹ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

²⁰ *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

would assign a CDU of Fair and would then use different sales as comparable properties to establish the valuation of the Subject Property.

23. The Taxpayers refused the inspection because they had previously allowed an inspection and they were concerned that the county would not be inspecting other properties.
24. The Assessor, in order to accurately describe these critical characteristics must inspect the subject property. This conclusion is supported by the Nebraska Supreme Court which has determined that “(w)here the county assessor does not act upon his own information, or does not make a personal inspection of the property, any presumption as to the validity of the official assessment does not obtain.”²¹ Given this mandate, where the Taxpayer refuses the County’s request to inspect the property, the provisions of the Adverse Inference Rule are triggered.²² The provisions of this rule may be summarized as follows: where the Taxpayer refuses to allow the County to inspect the subject property, after challenging the assessed value as determined by the County, there is a presumption that the results of the inspection would militate against the Taxpayer’s interest. The finder of fact is the sole judge of what probative force to give the fact that the Taxpayer refused the County’s request to inspect the property. Furthermore, that the relative convincing powers of the inferences to be drawn from that fact is for the determination of the finder of fact.
25. The Taxpayers provided property record cards for several properties they asserted were similar to the Subject Property. They noted that the valuations on the alleged comparable properties had not increased by the same amount as the Subject Property.
26. The Appraiser explained that a portion of the increase in assessed value for the Subject Property for 2012 tax year was attributable to an adjustment to the assessed values of farm utility buildings. The Appraiser indicated that farm utility buildings’ assessed values were increased at a higher percentage than other improvements because farm utility buildings had previously been undervalued. The Appraiser attributed the remaining increase of assessed value for the Subject Property to increases in the actual value of real property as derived by the open market.
27. Additionally, the Taxpayer expressed concerns that the Subject Property was not equalized with other properties. The Taxpayer provided multiple property record cards to illustrate this assertion.
28. At least two tests exist for determining if a subject property is not equalized: (1) if comparable properties are valued at materially different levels of value they are not equalized with each other;²³ (2) if an examination of the actual to assessed values of properties indicates that properties are not valued at the same level of actual value then the properties are not equalized.²⁴

²¹ *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 582-83, 144 N.W.2d 161, 169 (1966).

²² See, *Yarpe v. Lawless Distrib. Co.*, 7 Neb.App. 957, 962 - 963, 587 N.W.2d 417, 421 (1998).

²³ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

²⁴ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

29. The alleged comparable properties provided by the Taxpayer ranged in size, basement finish, quality, CDU rating, garages and outbuildings. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.²⁵ The Commission finds that the properties included in the Taxpayer's alleged comparable properties are not truly comparable.
30. Additionally, the Taxpayer did not provide any evidence of the ratio of actual to assessed values of the alleged comparable properties.
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.
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.
33. The Commission finds that the Taxpayer has not produced clear and convincing evidence that the valuation placed on the Subject Property was grossly excessive.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Lancaster County Board of Equalization determining the value of the Subject Property for tax year 2012, is Affirmed.
2. The taxable value of the Subject Property for tax year 2012 is:

Land	\$ 22,500
<u>Improvements</u>	<u>\$107,100</u>
Total	\$129,600

3. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster 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 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 2012.

²⁵ See generally, *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers (2010) at 169-79.

7. This Decision and Order is effective on March 14, 2014.

Signed and Sealed: March 14, 2014

Nancy J. Salmon, Commissioner