

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Cathy R. Brogdon,  
Appellant,

v.

Scotts Bluff County Board of Equalization,  
Appellee.

Case No: 14R 309

Decision and Order Reversing the  
Determination of the Scotts Bluff  
County Board of Equalization

1. A Single Commissioner hearing was held on May 20, 2015, at Hampton Inn North Platte, 200 Platte Oasis Parkway, North Platte, Nebraska, before Commissioner Salmon.
2. Cathy R. Brogdon (the Taxpayer) was present at the hearing.
3. Angie Dittman, Deputy County Assessor, was present for the Scotts Bluff County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is a mobile home park and 3 mobile homes, with a legal description of: Tr 2A, Pt NE ¼ NE /4 9-23-58, Scotts Bluff County, Nebraska.

Background

5. The Scotts Bluff County Assessor (the Assessor) assessed the Subject Property at \$40,527 for tax year 2014.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$26,000 for tax year 2014.
7. The County Board determined that the taxable value of the Subject Property was \$40,527 for tax year 2014.
8. The Taxpayer appealed the determination of the County Board 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.<sup>1</sup> “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.”<sup>2</sup>
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

<sup>1</sup> See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

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

sufficient competent evidence to justify its action.”<sup>3</sup> 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.”<sup>4</sup>

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.<sup>5</sup>
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
14. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>
15. The Taxpayer asserted the Subject Property was not equalized with other properties in Scotts Bluff County. She asserted that hookups located on parcels owned by Lessert Enterprises, LLC were similar to the Subject Property, but assessed at significantly less. She specifically asserted that the hookups on the alleged comparable properties had shut offs that are worth \$2,500. She also asserted that the 1979 double wide mobile home located on the Subject Property was not equalized with mobile homes found on other alleged comparable properties. She provided property record cards for four alleged comparable properties.
16. The Taxpayer did not dispute the land valuation or the \$1,125 valuation for the 1964 mobile home.
17. The Property Record Card for the Lessert Enterprises parcel was included in the County Packet. The improvement value for the mobile home hookups was show as \$1,988 and included 3 hookups, the same number as the Subject Property. The Deputy Assessor stated that the Subject Property’s hookups were new and not receiving any depreciation. She stated the alleged comparable property had hookups there since 1982 and that they were receiving depreciation. There was no costing sheet provided. The Subject Property hookups are receiving 72% physical depreciation according to the Property Record Card.
18. The Deputy County Assessor was not aware of the costing for the other alleged comparable properties and could not explain the differences in the valuation.

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<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

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

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

19. The Deputy County Assessor provided the Commission with a new opinion of value following an inspection of the Subject Property. The correction contained \$6,258 for the mobile home hookups, land valuation of \$13,500, 1979 mobile home \$14,157, and a 1964 mobile home for \$1,125.
20. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>
21. 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].”<sup>13</sup>
22. At least two tests exist for determining if property within a taxing district is equalized: (1) does a comparison of the ratio of assessed to actual value indicate that properties are assessed at different levels of value;<sup>14</sup> and (2) are substantial similar properties valued at materially different levels of value.<sup>15</sup>
23. Concerning the Lessert Enterprises, LLC properties, the Commission finds that the difference in the assessed value of the hookups compared to the assessed value of the Subject Property’s hookups are explained by the difference in age. The County Assessor testified that the alleged comparable properties were receiving greater depreciation because they were older. This difference explains any differences in the assessed values.
24. Concerning the Taxpayer’s alleged comparable properties, the Commission notes that all of the alleged comparable properties are single wide mobile homes. The Subject Property is a double wide mobile home. The Subject Property and all alleged comparable properties were valued using the cost approach using software that utilizes Marshall & Swift costing tables.
25. A review of the costing tables indicates that the base per square foot value of an average quality double wide mobile home at 24 feet wide and 36 feet long, including the Subject Property, is \$53.41. Conversely, the base per square foot value of an average quality

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

<sup>10</sup> *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).

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

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

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

<sup>14</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

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

single wide trailer at 16 feet wide and 68 feet long, similar to the Jackson alleged comparable property and the Sackschewsky alleged comparable property, is \$37.35, and \$36.38 per square foot for a single wide mobile home at 16 feet wide and 76 feet long, similar to the Prickett alleged comparable property, and \$42.15 for a single wide mobile home at 14 feet wide and 36 feet long, similar to the Flores alleged comparable property.<sup>16</sup>

26. The Subject Property and the alleged comparable properties are not comparable. Based on the testimony and property records cards the Commission finds that the difference in base cost per square foot explain all differences in assessed values. A comparison of the levels of value for equalization purposes is therefore given little probative weight.
27. Finally, the Taxpayer did not provide any ratios of the assessed values to the actual values for the Subject Property or any of the comparable properties.
28. However, the Commission finds that the County Assessor's revised opinion of value is clear and convincing evidence that the County Board's determination, which relied upon the County Assessor's previously errant opinion of value, is arbitrary and unreasonable.
29. 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.
30. The Taxpayer has 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 reversed.

## ORDER

### IT IS ORDERED THAT:

1. The Decision of the Scotts Bluff County Board of Equalization determining the taxable value of the Subject Property for tax year 2014 is reversed.
2. The taxable value of the Subject Property for tax year 2014 is:

Land	\$13,500
<u>Improvements</u>	<u>\$21,540</u>
Total	\$35,040

3. This Decision and Order, if no further action is taken, shall be certified to the Scotts Bluff County Treasurer and the Scotts Bluff County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 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.

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<sup>16</sup> See, Marshall & Swift, Residential Cost Handbook, page Mfg-19 (2013).

6. This Decision and Order shall only be applicable to tax year 2014.
7. This Decision and Order is effective on May 27, 2015.

Signed and Sealed: May 27, 2015

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Nancy J. Salmon, Commissioner