

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Allan C. McClure,
Appellant,

v.

Gosper County Board of Equalization,
Appellee.

Case No: 15R 0109

Decision and Order Affirming Gosper
County Board of Equalization

Background

1. The Subject Property is a residential parcel improved with a 2,652 square foot dwelling, with a legal description of: Lot 10, Mallard Beach, Sec 6; Improvements only located upon Pt. SW ¼ 6-8-22, Gosper County, Nebraska.
2. The Gosper County Assessor (the County Assessor) assessed the Subject Property at \$508,307 for tax year 2015.
3. The Taxpayer protested this value to the Gosper County Board of Equalization (the County Board) and requested an assessed value of \$355,119 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$494,615 for tax year 2015.
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 July 19, 2016, at the Hampton Inn, North Platte, Nebraska, before Commissioner Nancy J. Salmon.
7. Allan C. McClure was present at the hearing for the Taxpayer.
8. Todd Wilson, Gosper 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) (2014 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. The issue 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 Gosper 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(8) (2014 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) (2014 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

18. The Subject Property is a permanent residence situated on Johnson Lake. It is located at 93 Mallard Beach Drive.
19. The Taxpayer asked the Commission to consider a comparable property located in his neighborhood. The suggested comparable property is located at 133 Mallard Beach Drive. According to the Taxpayer, the comparable property was constructed in the same year as the Subject Property (2000), and was built by the same builder. He did note that the Subject Property is 322 square feet larger and has a larger garage, but has a smaller basement area. It was the Taxpayer’s contention that the two properties are comparable. However, he asserts that the Subject Property has an assessed valuation which is approximately \$139,496 higher than the comparable property. The Taxpayer argued that the valuation attributed the Subject Property was not equalized with the value attributed to the Comparable Property.
20. The County Assessor, Cheryl Taft, stated that she valued the Subject Property as well as the Comparable Property using the cost approach. She also applied market depreciation. She indicated that, in her opinion, there was a difference in the quality of the Subject Property as compared to the Comparable Property. The Subject Property is of a “Very Good Quality” whereas the Comparable Property was found to be “Good.” The Taxpayer indicated that he has not seen the Comparable Property so was unaware of any differences in quality of the two homes. Ms. Taft also noted that the two properties are in different neighborhoods. Both properties are lakefront homes, but the Subject Property’s area has more water later in the season than the Comparable Property. Mr. McClure did not dispute that conclusion. Ms. Taft indicated that the difference in water availability late in the season is reflected in differences in the sales markets of other homes.
21. The Commission recognizes that the cost approach is an acceptable mass appraisal technique commonly utilized by county assessors. The County Assessor also indicated to the Commission that she values leasehold interests of lakefront properties by frontage feet area using the sales comparison method.

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.

22. The Taxpayer asserts that the Subject Property is not equalized with other parcels. 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].”¹⁸
23. Based upon a comparison of the properties described above, the Commission finds that the Taxpayer has not met his burden of persuasion.
24. 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.
25. The Taxpayer has not 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 affirmed.

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 2015, is Affirmed.
2. The taxable value of the Subject Property for tax year 2015 is:

Leasehold	\$102,000
<u>Improvements</u>	<u>\$392,615</u>
Total	\$494,615

3. This Decision and Order, if no further action is taken, shall be certified to the Gosper County Treasurer and the Gosper 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.
6. This Decision and Order shall only be applicable to tax year 2015.
7. This Decision and Order is effective on July 25, 2016

Signed and Sealed: July 25, 2016

Nancy J. Salmon, Commissioner

¹⁸ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

