

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Chris F. Van Egmond,
Appellant,

v.

Antelope County Board of Equalization,
Appellee.

Case No: 15R 0113

Decision and Order Reversing Antelope
County Board of Equalization

Background

1. The Subject Property is a residential parcel improved with 1,024 square foot single family dwelling, a detached garage and two utility buildings, with a legal description of: Tr E ½ NE ¼ 35-28-5 cont. 9.84 acres, Antelope County, Nebraska.
2. The Antelope County Assessor (the County Assessor) assessed the Subject Property at \$79,910 for tax year 2015.
3. The Taxpayer protested this value to the Antelope County Board of Equalization (the County Board) and requested an assessed value of \$59,420 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$79,910 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 June 13, 2016, Ramada Inn, Columbus, Nebraska, before Commissioner Nancy J. Salmon.
7. Chris F. Van Egmond was present at the hearing for the Taxpayer.
8. Kelly Mueller, Antelope County Assessor, 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 Taxpayer stated that his land value had increased by approximately 66% in 2015 as compared to 2014. The Assessor noted that the land values for all acreages increased during that year. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.¹⁰
17. The Taxpayer asserted that his land values were not equalized with land values of surrounding counties. To support this position, he submitted web shots from acreages in Madison and Pierce Counties. The Commission notes that the submitted comparable properties are located in different market areas than that of the Taxpayer. A market area is defined as an area with defined characteristics within which similar properties are effectively competitive in the minds of buyers and sellers with other comparable properties in the area.¹¹ Because the submitted properties are outside the market area of the Taxpayer’s, the Commission is unable consider them.
18. The Taxpayer submitted property records for several allegedly comparable Antelope County properties, including an acreage owned by Dale and Alice Butterfield. The Assessor stated that due to a clerical error, the Butterfield property’s one acre homesite is assessed at \$2,500 rather than the \$15,000 home site valuation of other acreages in Antelope County, including that of the Taxpayer. The Taxpayer argued that the valuation attributed to the value of the homesite component of the Subject Property was not equalized with the value attributed to the homesite component of the Butterfield property.

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

¹⁰ *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).

¹¹ 350 Neb. Admin. Code, Chap. 14, §002.47

19. Equalization of property valuation is protected by the Nebraska Constitution. “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.”¹² Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹³ 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.¹⁴ 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.¹⁵ 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.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.¹⁷ The constitutional requirement of uniformity in taxation extends to both rate and valuation.¹⁸ 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].”¹⁹ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁰
20. With respect to the issue of equalization, 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.
21. The Taxpayer has 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 vacated.

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 Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2015 after equalization is:

Land	One acre Homesite	\$2,500
	Remaining 7.89 acres at \$2,500	\$19,725
Improvements		<u>\$45,185</u>
Total		<u>\$67,410</u>

¹² *Neb. Const., Art VIII, Section 1*

¹³ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹⁴ *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).

¹⁵ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

¹⁶ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹⁷ *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).

¹⁸ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

¹⁹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁰ *Id.* at 673, 94 N.W.2d at 50.

3. This Decision and Order, if no further action is taken, shall be certified to the Antelope County Treasurer and the Antelope 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 June 24, 2016.

Signed and Sealed: June 24, 2016

Nancy J. Salmon, Commissioner