

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

MH Garden, LLC,
Appellant,

v.

Keith County Board of Equalization,
Appellee.

Case No: 16R 0031& 16R 0032

Decision and Order Reversing
County Board of Equalization

Background

1. The Subject Properties of these two appeals consist of two residential parcels. 16R 0031 is improved with a 2,400 square foot utility building and 16R 0032 is a vacant lot, with a legal description of: 16R 0031, Lot 9 Blk 5, Mao'-ch-mni Sub, and 16R 0032 Lot 10, Blk 5, Mako'-ch-mni Sub, Keith County, Nebraska.
2. The Keith County Assessor (the County Assessor) assessed the Subject Property in Case No. 16R 0031 at \$95,665 (\$45,665 for the utility building and \$50,000 for the land) for tax year 2016. The unimproved land in Case No. 16R 0032 was assessed at \$50,000 for tax year 2016.
3. The Taxpayer protested this value to the Keith County Board of Equalization (the County Board) and requested an assessed value in Case No. 16R 0031 at \$70,665 and Case No. 16R 0032 at \$25,000 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$95,665 in case 16R 0031 and in case 16R 0032 at \$50,000 for tax year 2016.
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 May 31, 2017 at the Hampton Inn, North Platte, Nebraska, before Commissioner Nancy J Salmon.
7. Milton Rogge was present at the hearing for the Taxpayer.
8. Randy Fair, Keith 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

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² See, Neb. Rev. Stat. §77-5016(8) (2016 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

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 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 Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. “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.”⁷ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁸ 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.⁹ 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.¹⁰ 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.¹¹ 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.¹² The constitutional requirement of uniformity in taxation extends to both rate and valuation.¹³ 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

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).

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(9) (2016 Cum. Supp.).

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

⁷ *Neb. Const., Art VIII, Section 1*

⁸ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

⁹ *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).

¹⁰ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

¹¹ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹² *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).

¹³ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

not mere error of judgment [sic].”¹⁴ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.¹⁵

14. The Taxpayer is the owner of three properties located in Makochmni Subdivision in Keith County. The Subject Properties constitute two of the Taxpayer’s three properties. His other property consists of a lakefront home and is not part of this appeal. The Taxpayer purchased the lakefront home in 1998 and wanted to add a utility building for storage. Noting that the lot upon which the home was built did not contain adequate room for another structure, the Taxpayer purchased two adjoining vacant lots approximately one-fourth mile from the home. He erected a utility building on one lot and utilized the other lot for parking. He does not contest the value placed on the utility building, but asserts that the land value placed on the two lots (\$50,000 for each lot) is not equalized with other lots within the subdivision.
15. The Taxpayer asked the Commission to consider a property near the Subject Property which previously consisted of two lots which are now combined into one for tax purposes. The comparable property was previously valued at \$70,000 by the County Assessor, but its value was reduced to a total of \$30,000 by the Keith County Board of Equalization. The Subject Property and the Comparable Property are located relatively close to one another, but the Comparable Property has lake frontage. When considering the fact that the Comparable Property was actually combined from two separate lots, the properties are very similar in size. The Taxpayer argued that the valuation attributed to the value of the land component of the Subject Property was not equalized with the value attributed to the land component of the Comparable Property. The submitted evidence indicated that the owner of the Comparable Property had protested its value in 2016, and the Board of Equalization reduced its value from \$70,000 to \$30,000. This equates to a value of \$15,000 for each of the Comparable Property’s two lots. 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.¹⁶
16. The Taxpayer asserts that the Subject Property is not equalized with the other parcel described above. 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].”¹⁷ Based upon a comparison of the properties described above, the Commission finds that the Taxpayer has met this burden of persuasion.

¹⁴ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹⁵ *Id.* at 673, 94 N.W.2d at 50.

¹⁶ *Zabawa v. Douglas County Bd of Equalization*, 17 Neb. App. 221 (2008), *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).

¹⁷ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

17. The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.¹⁸
18. For all of the reasons set forth above, the decision of the Keith County Board of Equalization should be vacated and reversed.

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 2016 is Reversed.
2. With respect to Case No. 16R 0031, the taxable value of the Subject Property for tax year 2016 is:

Land	\$15,000
<u>Improvements</u>	<u>\$45,665</u>
Total	\$60,665

With respect to Case No. 16R 0032, the taxable value of the Subject Property for tax year 2016 is:

Land	\$15,000
<u>Improvements</u>	<u>\$ 0</u>
Total	\$15,000

3. This Decision and Order, if no further action is taken, shall be certified to the Keith County Treasurer and the Keith County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 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 2016.
7. This Decision and Order is effective on June 12, 2017.

Signed and Sealed: June 12, 2017

Nancy J Salmon, Commissioner

¹⁸ Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board at the protest proceeding.

