

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

Diane D. Poppe,  
Appellant,

v.

Merrick County Board of Equalization,  
Appellee.

Case No: 17R 0027

Decision and Order Reversing  
County Board of Equalization

**Background**

1. The Subject Property is a 1,560 square foot single family dwelling, with a legal description of: Replat of Lakeview Add Lot 4 45-4CC (TIF Project-Lakeview 2010) S-T-R 16-13-06.
2. The Merrick County Assessor (the County Assessor) assessed the Subject Property at \$298,940 for tax year 2017.
3. Diane D. Poppe (the Taxpayer) protested this value to the Merrick County Board of Equalization (the County Board) and requested an assessed value of \$259,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$298,940 for tax year 2017.
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 2, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Diane D. Poppe and Daniel Poppe were present at the hearing for the Taxpayer.
8. Jan Placke, the County Assessor, and Lynelle Homolka, Merrick County Attorney, were 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.<sup>1</sup>
10. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup>

<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</sup> 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 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).

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.”<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>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>
16. 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.”<sup>9</sup> 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>10</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>11</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>12</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>13</sup> Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is

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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(9) (2016 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) (2016 Cum. Supp.).

<sup>9</sup> *Neb. Const., Art VIII, Section 1*

<sup>10</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>11</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>12</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>13</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

assessed at less than the actual value.<sup>14</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>15</sup>

17. If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that the 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.”<sup>16</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>17</sup>

#### Findings of Fact & Conclusions of Law

18. The Taxpayer feels the Subject property has been overvalued as evidenced by an appraisal completed on August 15, 2016 indicating a market value of \$267,000. A second appraisal was performed January 1, 2017 and also gave an indicated value of \$267,000.
19. Issues with these appraisals were raised by the County Board because incorrect square footages were used to determine adjusted values of comparable sales. The Commission finds that these errors limit the weight that should be placed upon these appraisals in determining the actual value of the Subject Property.
20. The County Assessor testified that her office uses the cost approach to value and utilizes a depreciation model that was built for Merrick County with help from the Nebraska Department of Revenue, Property Assessment Division. The County Assessor also stated the housing market is strong in Merrick County at this time.
21. The County Assessor provided property record cards for ten homes in the Lakeview Addition. Of the ten homes, five homes are considered by the Commission to be most comparable. All five comparable properties have a basement with a majority of partition finish. All five comparable properties have the same quality and condition. The range in price per square foot is \$156.93 to \$167.59 with a median price per square foot of \$162.07. The Subject Property has the highest price per square foot of \$167.59. The Subject Property has a lake view as does the property that falls at the median price per square foot.
22. The Commission finds the median price per square foot of \$162.07 to be the appropriate equalized value for the Subject Property.
23. The Taxpayer has established by clear and convincing evidence that the valuation placed on the Subject 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.

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<sup>14</sup> *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).

<sup>15</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>16</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>17</sup> *Id.* at 673, 94 N.W.2d at 50.

24. 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.
25. 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 2017, is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 37,500
<u>Improvements</u>	<u>\$252,830</u>
Total	\$290,330

3. This Decision and Order, if no further action is taken, shall be certified to the Merrick County Treasurer and the Merrick 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 2017.
7. This Decision and Order is effective on July 16, 2018.

Signed and Sealed: July 16, 2018

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James D. Kuhn, Commissioner