

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Laurie-Witters Churchill Trust, Mark A.
Churchill, Trustee,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 12R 121

Decision and Order Affirming Lancaster
County Board of Equalization

1. A Single Commissioner hearing was held on October 16, 2013, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Salmon.
2. Mark A. Churchill was present at the hearing for Laurie-Witters Churchill Trust (Taxpayer).
3. Alice Lauer was present for the Lancaster County Board of Equalization (the County).
4. The Subject Property (Subject Property) is a residential parcel improved with a 3,182 square foot 2 story single family dwelling, with a legal description of: Lot 5, Block 3, Lancashire Estates Addition, Lincoln, Lancaster County, Nebraska.

Background

5. The Lancaster County Assessor assessed the Subject Property at \$317,200 for tax year 2012.
6. The Taxpayer protested this value to the Lancaster County Board of Equalization and requested an assessed value of Unknown for tax year 2012.
7. The Lancaster County Board of Equalization determined that the assessed value of the Subject Property was \$317,200 for tax year 2012.
8. The Taxpayer appealed the determination of the County 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.¹ "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."²

¹ See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

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

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 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
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.⁵
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
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.⁷
14. “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.”⁸ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁹ 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.¹⁰
15. 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.¹¹ 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.¹² 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

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) (2012 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. Const.*, Art. VIII, §1.

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

¹⁰ *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).

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

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

value.¹³ The constitutional requirement of uniformity in taxation extends to both rate and valuation.¹⁴

16. 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].”¹⁵ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.¹⁶ “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”¹⁷
17. The Taxpayer asserted that the Subject Property was not equalized with three comparable properties in his neighborhood. He provided the Commission with a document listing the 2009-2011 valuation of the three alleged comparable properties and the decrease in valuation for 2012 for the three alleged comparable properties. He listed the Subject Property’s 2009-2011 Valuation and the 2012 increase in valuation. He was uncertain why the Subject Property would increase and the three comparable properties would decrease. He explained to the Commission that he has been inside at least one of the comparable properties and opined that it was in better condition and quality than the Subject Property. He opined that if the alleged comparable properties were rated 4, the Subject Property should be rated 3. He did not quantify how much a change in CDU would adjust the assessed value for January 1, 2012.
18. The Appraiser from Lancaster County explained that the Subject Property had a CDU (condition, desirability and utility) rating of 4 for tax years 2009-2011 and the comparable properties had a CDU rating of 5. She explained that a review of the neighborhood had been done in 2010 for 2012 assessment and all the properties were equalized to a 4 CDU. She noted that when a review is completed, the previous CDU is not taken into consideration, but is based on the current inspection. She also noted that one of the Taxpayer’s comparable properties had been valued for 2012 using the same 3 comparable properties as the Subject Property and two of the comparable properties had been assessed using two of the same comps. She stated that when she used the same three comps for the Subject Property, the valuation would increase for January 1, 2012. She noted that the neighborhoods were reviewed at least once every 6 years unless there was a sale or other factors that would cause a review.

¹³ *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).

¹⁴ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

¹⁵ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹⁶ *Id.* at 673, 94 N.W.2d at 50.

¹⁷ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

19. 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.
20. The Taxpayer has not 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 affirmed.
21. The Taxpayer has not adduced by clear and convincing evidence that the valuation placed on the Subject Property was grossly excessive or that similarly situated properties were valued at materially different levels.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Lancaster County Board of Equalization determining the value of the Subject Property for tax year 2012, is Affirmed.
2. That the Taxable value of the Subject Property for tax year 2012 is:

| | |
|---------------------|------------------|
| Land | \$ 70,000 |
| <u>Improvements</u> | <u>\$247,200</u> |
| Total | \$317,200 |

3. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 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 2012.
7. This Decision and Order is effective on October 18, 2013.

Signed and Sealed: October 18, 2013

Nancy J. Salmon, Commissioner