

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jeffery K. Kletzmayer,
Appellant,

v.

Keith County Board of Equalization,
Appellee.

Case No: 11R 113

Decision Reversing
County Board of Equalization

BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a residential parcel located near Lake McConaughy in Keith County, Nebraska, with a legal description of: 29-15-38 LAKE HOME (IOLL) LOT 10 K-4 29-15-381A-O----16.
2. The Keith County Assessor assessed the Subject Property at \$107,405 for tax year 2011.
3. Jeffery K. Kletzmayer (herein referred to as the “Taxpayer”) protested this value to the Keith County Board of Equalization (herein referred to as the “County Board”) and requested an assessed value of \$75,000 for tax year 2011.
4. The County Board determined that the assessed value of the Subject Property was \$107,405 for tax year 2011.
5. The Taxpayer appealed the determination of the County to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
6. A Single Commissioner hearing was held at the Hampton Inn and Suites Conference Center, 301 W. Hwy. 26, Scottsbluff, Nebraska, before Commissioner Thomas D. Freimuth.
7. Jeffery K. Kletzmayer and Barbara Kletzmayer were present at the hearing.
8. Randy Fair, Keith County Attorney, and Cheryl Schiel, Keith County Assessor, were present for the County Board.

STANDARD OF REVIEW & APPLICABLE LAW

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. “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.”⁶ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁷ 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.⁸
13. 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.⁹
14. 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.¹⁰ 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.¹¹
15. The constitutional requirement of uniformity in taxation extends to both rate and valuation.¹² 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

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 *Neb. Const.*, Art. VIII, §1.

⁷ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

⁸ *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).

⁹ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

¹⁰ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹¹ *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).

¹² *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

[sic].”¹³ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”¹⁴

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.”¹⁵
17. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁶
18. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.¹⁷

VALUATION ANALYSIS

19. The Property Record File submitted by the County Board at the hearing indicates that the Taxpayer purchased the Subject Property for \$102,500 on August 14, 2009.
20. The Property Record File for the Subject Property indicates that County Board’s \$107,405 determination for tax year 2011 includes \$30,000 attributable to improvements on leased land (“IOLL”) and \$77,405 for improvements.
21. The Subject Property is located in the K-4 area surrounding Lake McConaughy. The County Board’s testimony and documents submitted at the hearing indicate that the Subject Property’s IOLL component was increased from \$15,000 in tax year 2010 to \$30,000 in tax year 2011 based on sales. The County Board submitted a spreadsheet that listed all “K Area Sales” supporting this increase. This spreadsheet indicates that the IOLL component for all properties sold in K-1, K-3 and K-4 was assessed at a minimum of \$30,000 for tax year 2011. The Commission notes that the County Board’s spreadsheet indicates that the 2011 IOLL assessment for some properties sold in the K-1 area ranged from \$50,000 to \$70,000.
22. The Property Record File for the Subject Property indicates that County Board’s \$77,405 determination attributable to improvements for tax year 2011 is based on the cost approach.
23. Cheryl Schiel, the Keith County Assessor at the time of the hearing and an employee of the Assessor’s Office during tax year 2011, supplied the Commission with a revised opinion of value for the Subject Property in the amount of \$101,805, based on a correction to the measurement of the concrete driveway that resulted in reduction of the improvement value by \$5,600 from \$77,405 to \$71,805.

¹³ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹⁴ *Id.* at 673, 94 N.W.2d at 50.

¹⁵ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

¹⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁷ 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).

24. The Taxpayer asserted that the County Board's valuation determination is excessive because the \$102,500 purchase of the Subject Property in 2009 included personal property and reflected "move-in ready" condition. The Taxpayer, however, did not quantify the amount of personal property included in the \$102,500 purchase price. The Commission also notes that the Real Estate Transfer Statement (Form 521) relating to the 2009 sale transaction submitted by the County at the hearing indicates that the Taxpayer allocated \$102,500 to real property and nothing to personal property. Therefore, the Commission is unable to find that the Taxpayer's "move-in ready" condition assertion is supported by clear and convincing evidence that the County Board's decision is arbitrary or unreasonable.
25. The Taxpayer also asserted that the County Board's valuation determination is excessive based on the \$65,000 sale of Lot 1 in the K-4 area in 2010. In response, the County Board submitted documents at the hearing indicating that this sale was excluded from the "K Area Sales" spreadsheet referenced above because the \$65,000 purchase price reflected flood damage. The Taxpayer did not refute the County Board's testimony and documents regarding the basis for excluding the 2010 sale of Lot 1 in the K-4 area.
26. The Taxpayer also asserted that the County Board's valuation determination is excessive because it did not sufficiently consider the adverse consequences associated with increased traffic and camping activity near the Subject Property during Lake McConaughy's busy season. In support of this assertion, the Taxpayer submitted photos of the view of Lake McConaughy from the Subject Property that depict several parked cars, a campsite and full trash bins. The Taxpayer, however, did not submit evidence to quantify the impact of this busy season traffic for actual value purposes.
27. The Commission finds that the County Assessor's revised opinion of value is the best evidence of the actual value of the Subject Property.

EQUALIZATION ANALYSIS

28. The Taxpayer did not present evidence indicating that the assessed value of the Subject Property for tax year 2011 violated the uniformity clause of the Nebraska Constitution.
29. As indicated above, the sales spreadsheet submitted by the County Board indicates that the 2011 IOLL assessment for all properties sold in K-1, K-3 and K-4 was equal to or greater than the Subject Property's \$30,000 IOLL valuation. Additionally, the Property Record File for the property excluded from the sales spreadsheet (i.e., Lot 1 in K-4) indicates that its IOLL component was valued at \$30,000 for tax year 2011.
30. Therefore, the Taxpayer has not produced 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.

CONCLUSION

- 31. The Taxpayer has provided competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
- 32. The Taxpayer has 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 vacated.

ORDER

IT IS ORDERED THAT:

- 1. The Decision of the Keith County Board of Equalization determining the value of the Subject Property for tax year 2011 is Vacated and Reversed.
- 2. That the Taxable value of the Subject property for tax year 2011 is: \$101,805.

Land/Leasehold	\$ 30,000
Improvements	\$ 71,805
Total	\$101,805

- 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 (2012 Cum. Supp.)
- 4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
- 5. Each Party is to bear its own costs in this proceeding.
- 6. This decision shall only be applicable to tax year 2011.
- 7. This order is effective on September 10, 2013.

Signed and Sealed: September 10, 2013.

Thomas D. Freimuth, Commissioner