

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Tami S. Waddel
Appellant,

v.

Lancaster County Board of Equalization
Appellee

Case No: 12R 061

Decision Affirming Lancaster
County Board of Equalization

1. A Single Commissioner hearing was held on September 3, 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. Tami S. Waddel (Taxpayer) was present at the hearing.
3. Jeff Johnson was present for the Lancaster County Board of Equalization (the County).
4. The Subject Property (Subject Property) is rural residential parcel improved with a 1,684 single family dwelling, with a legal description of: Lot 2, Post Rock Pines, 3.37 acres, Lancaster County, Nebraska.

Background

5. The Lancaster County Assessor assessed the Subject Property at \$254,300 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 \$254,300 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
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.¹³ The

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 See, *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. 236, 411 N.W.2d 35 (1987).

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).

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

17. The Taxpayer asserted that the valuation on the Subject Property had increased \$26,400 in 2012 from the 2011 assessment. She provided the Commission with a property record card of the property across the street from the Subject Property and noted the valuation had only increased \$8,900 for the same time period. She also stated that the property across the street had added a 1,280 square foot farm utility building in 2010.
18. The Appraiser from the county stated that a re-appraisal of both the Subject Property and the alleged comparable property had been completed for 2012.
19. The assessed value for real property may be different from year to year, dependent upon the circumstances.¹⁷ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.¹⁸
20. The Taxpayer did not agree with the Comparable Sales Report the County used for the Sales Comparison Approach. She noted that Comp 2 was located 20+ miles from the Subject Property and asserted that the market was not the same. The Subject Property is located in South Lancaster County just 3 miles from the County Line. She furnished the Commission with eight alleged comparable properties. Four of the alleged comparable properties were sales. She noted that she paid \$252,500 for the Subject Property in May 2010, but had overpaid because of the tax credits. She believed the four alleged comparable sales would be more comparable to the Subject Property to arrive at the valuation. She also provided the Commission with four alleged comparable properties she asserted the Subject Property had not been equalized with. The eight alleged comparable properties were closer to the Subject Property.
21. The alleged comparable properties provided by the Taxpayer ranged in size, basement finish, quality, CDU rating, garages and outbuildings. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁹ The Commission finds that the properties included in the Taxpayer’s alleged comparable properties are not truly comparable.

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

¹⁸ *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).

¹⁹ See generally, *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers (2010) at 169-79.

Additionally, the Taxpayer did not provide any evidence of the ratio of actual to assessed values of the alleged comparable properties.

22. The Taxpayer asserted that the Subject Property was not Average Plus condition as listed on the property record card under CDU. She stated there were problems with the Walk-Out basement door and some water problems in the basement. She stated the water problems were not noticed until 2012. She had not allowed the County an Interior Inspection.
23. The Assessor, in order to accurately describe these critical characteristics must inspect the subject property. This conclusion is supported by the Nebraska Supreme Court which has determined that “(w)here the county assessor does not act upon his own information, or does not make a personal inspection of the property, any presumption as to the validity of the official assessment does not obtain.”²⁰ Given this mandate, where the Taxpayer refuses the County’s request to inspect the property, the provisions of the Adverse Inference Rule are triggered.²¹ The provisions of this rule may be summarized as follows: where the Taxpayer refuses to allow the County to inspect the subject property, after challenging the assessed value as determined by the County, there is a presumption that the results of the inspection would militate against the Taxpayer’s interest. The finder of fact is the sole judge of what probative force to give the fact that the Taxpayer refused the County’s request to inspect the property. Furthermore, that the relative convincing powers of the inferences to be drawn from that fact is for the determination of the finder of fact.
24. 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.
25. 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.

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	\$ 57,500
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²⁰ *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 582-83, 144 N.W.2d 161, 169 (1966).

²¹ *See Yarpe v. Lawless Distrib. Co.*, 7 Neb.App. 957, 962 - 963, 587 N.W.2d 417, 421 (1998).

<u>Improvements</u>	<u>\$196,800</u>
Total	\$254,300

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 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 2012.
7. This order is effective on September 5, 2013.

Signed and Sealed: September 5, 2013

Nancy J. Salmon, Commissioner