

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Loren R. Fellows,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 12R 205

Decision Affirming Lancaster
County Board of Equalization

1. A Single Commissioner hearing was held on December 31, 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. Loren R. Fellows (the Taxpayer) was present at the hearing.
3. Dan Gibson, Lancaster County Appraiser, was present for the Lancaster County Board of Equalization (the County).
4. The Subject Property (Subject Property) is a residential parcel improved with a 1,808 square foot split foyer duplex, with a legal description of: Lot 6, Block 4, Briarhurst West 4th Add, Lincoln, Lancaster County, Nebraska.

Background

5. The Lancaster County Assessor assessed the Subject Property at \$195,400 for tax year 2012.
6. The Taxpayer protested this value to the Lancaster County Board of Equalization and requested an assessed value of \$160,000 for tax year 2012.
7. The Lancaster County Board of Equalization determined that the assessed value of the Subject Property was \$195,400 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

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).

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

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

² *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(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. 236, 411 N.W.2d 35 (1987).

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

16. The Taxpayer asserted that the Subject Property had not been equalized with a two story duplex he alleged to be comparable to the Subject Property that he had located on the internet and listed for \$179,000 with an assessed valuation of \$156,400.
17. The Commission notes on the property records that there are several differences between the Subject Property and the Taxpayer's alleged comparable property including: (1) gross living area; (2) basement area; (3) finished basement area; (4) number of plumbing fixtures; (5) quality rating; (6) CDU rating; and (7) type of siding. It is also noted that the alleged comparable may be a section 42 property with limited rents.
18. The Commission finds that the Taxpayer's alleged comparable property is not truly comparable. Additionally, the Taxpayer did not provide any evidence of the ratio of actual to assessed values of the alleged comparable properties.
19. The Appraiser explained that the Subject Property had been valued using a Gross Rent Multiplier and using Market Rent. He noted that the County's model used to derive the Gross Rent Multiplier considered the size, age, style and location.
20. The Taxpayer provided the Commission with the residential lease agreements for 2012. He did not dispute the gross rent multiplier used by the County Assessor, but alleged that the Subject Property was overvalued because the market rent was greater than the contract rent. Contract Rent on the agreements was \$1690 and the market rent on the County's model is \$2035. The Taxpayer's opinion of market value using the Gross Rent Multiplier is $\$1690 \times 96 = \$162,240$.
21. The use of actual or reported figures in mass appraisal is governed by appraisal principles. "For properties with reported figures the assessor has two choices: (1) use the reported figures for instances in which they have been verified or are consistent with estimated (typical) figures, or (2) consistently use estimated figures in all cases."¹⁵
22. In the current case, the Taxpayer's reported figures were not similar with the County Assessor's market derived rents. In other words, the reported rents are not consistent with the estimated rents derived from the market. The Commission finds that it was not unreasonable or arbitrary for the County Appraiser use discretion and use the market rents instead of the reported figures.
23. 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.
24. 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.

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 International Association of Assessing Officers, *Fundamentals of Mass Appraisal*, at 175 (2011).

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	\$ 35,000
<u>Improvements</u>	<u>\$160,400</u>
Total	\$195,400

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 January 6, 2014.

Signed and Sealed: January 6, 2014

Nancy J. Salmon, Commissioner