

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Kyle P. Kurtenbach,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 14R 367

Decision and Order Affirming the Decision
of the Lancaster
County Board of Equalization

Background

1. The Subject Property is a 371 square foot condominium located at 1630 H Street, Lincoln, Lancaster County, Nebraska. The legal description of the Subject Property is found in the Case File.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$33,000 for tax year 2014.
3. The Taxpayer protested this value to the Lancaster County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$33,000 for tax year 2014.
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 August 14, 2015, at a Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Kyle P. Kurtenbach was present at the hearing.
8. Lyman Taylor, an employee of the County Assessor, was 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 1.¹
10. The Commission’s review of the determination of the County Board of Equalization is de novo.²

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² See, Neb. Rev. Stat. §77-5016(8) (2014 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.”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
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.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
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.⁷
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. Kyle Kurtenbach purchased the Subject Property on May 16, 2012, for \$18,000.
17. Kurtenbach stated he had completed some updates to the property, including the kitchen cabinets, bathroom, and trim work. Lyman Taylor stated that a building manager at the Subject Property had provided a description of the updates. A Building & Safety Department Electric Permit indicated that electrical updates were done throughout the unit in September, 2012. At the hearing, neither party could quantify how much updating was done to the unit prior to January 1, 2014, or the effect of the updating on the taxable value of the Subject Property as of January 1, 2014.
18. Kurtenbach argued that the Subject Property should not have been assessed with a condition rating of average plus. However, the County Assessor had done no interior inspection of the Subject Property since any of the updates had been completed by Kurtenbach, and no inspection had been done since January 1, 2014. At the hearing, Kurtenbach stated that he did not want to have an inspection of the interior of the Subject

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) (2014 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. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

- Property. Without an interior inspection, the Commission is limited in its ability to determine whether the average plus condition rating is arbitrary or unreasonable.
19. Kurtenbach also asserted that the increase in the assessed value of the Subject Property from \$17,900 in tax year 2013 to \$33,000 in tax year 2014 was not reasonable. The assessed value for real property may be different from year to year, dependent upon the circumstances. For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.
 20. Kurtenbach also argued that recent sales of other condominium units in the same building indicate that the Subject Property was assessed too high for tax year 2014. The County Board provided a printout of property record card information for the other units in the same building, and Kurtenbach also provided property record cards for multiple units in the same building.
 21. The property records indicate that the condominium units in the same building as the Subject Property are either 371 square feet in area or 500 square feet in area. Of the 371 square foot units, the same size as the Subject Property, four other 371 square foot units sold in 2012 or 2013, the two years prior to the tax year 2014 effective date of January 1, 2014. Those units sold for prices ranging from \$15,000 to \$20,000. As noted above, Kurtenbach purchased the Subject Property in 2012 for \$18,000.
 22. Each of the same four units was assessed in tax year 2014 at \$24,350. The condition rating for each of these four units for tax year 2014 is unknown. The Subject Property was assessed in tax year 2014 at \$35,870. The condition rating of the Subject Property for tax year 2014 was average plus.
 23. The burden on the taxpayer when making an equalization claim⁹ is to show by clear and convincing evidence that the valuation placed upon the taxpayer's property when compared with valuation placed on other similar property is grossly excessive."¹⁰ In this appeal, there is no clear and convincing evidence that the valuation of the Subject Property is grossly excessive. The property records indicate that each of the other 371 square foot properties were assessed at a value \$11,520 less than the Subject Property, but the evidence indicates that the higher valuation of the Subject Property was attributed to its higher condition rating. Without evidence that the other properties were of the same condition as of January 1, 2014, this Taxpayer's equalization claim cannot prevail.
 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 established by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is

⁹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹⁰ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).

grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”¹¹

26. The Taxpayer has not 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 affirmed.

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 2014 is affirmed.
2. The taxable value of the Subject Property for tax year 2014 is \$33,000.
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 (2014 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 2014.
7. This Decision and Order is effective on August 21, 2015.

Signed and Sealed: August 21, 2015

Robert W. Hotz, Commissioner

¹¹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).