

CASE NO. A-21-774

IN THE NEBRASKA COURT OF APPEALS

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LANCASTER COUNTY BOARD OF EQUALIZATION,

Appellant,

vs.

BRAD MOSER AND MARY MOSER,

Appellees.

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APPEAL FROM THE  
TAX EQUALIZATION AND REVIEW COMMISSION

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BRIEF OF APPELLEES

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## STATEMENT OF JURISDICTION

The basis of jurisdiction as set forth in Appellant's brief is accepted as correct by Appellees.

## STATEMENT OF THE CASE

The Statement of the Case as set forth in Appellant's brief is accepted as correct by Appellees.

## PROPOSITIONS OF LAW

1. Questions of law arising during appellate review of TERC decisions are reviewed de novo on the record. *Darnall Ranch v. Banner Cty. Bd. of Equal.*, 276 Neb. 296, 302 (2008).
2. To overcome a presumption that the Board of Equalization acted reasonably, the protesting taxpayer must present competent evidence to the contrary, at which point the presumption disappears and reasonableness of valuation becomes one of fact based on all the evidence presented. *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 284 (2008).
3. When reviewing an order for errors appearing on the record, the appellate court's inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *Darnall Ranch v. Banner Cty. Bd. of Equal.*, 276 Neb. 296, 302 (2008).

4. Where the taxpayer succeeds in establishing that the Board's valuation is grossly excessive to that of comparable properties, the standard of review contemplates two reasons sufficient to rebut the statutory presumption favoring the Board's decision. Systematic exercise of intentional will constitutes one reason, but the standard also specifies failure of plain duty as an equally sufficient basis. *Zabawa v. Douglas Cty. Bd. of Equal.*, 17 Neb. App. 221, 225 (2008).
5. Nebraska law makes clear that when properties are comparable . . . the Board has a plain duty to value them similarly. *Zabawa v. Douglas Cty. Bd. of Equal.*, 17 Neb. App. 221, 227 (2008).
6. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. *Zabawa v. Douglas Cty. Bd. of Equal.*, 17 Neb. App. 221, 227 (2008).
7. To set the valuation of similarly situated property, i.e., comparables, at materially different levels . . . is by definition unreasonable and arbitrary. *Zabawa v. Douglas Cty. Bd. of Equal.*, 17 Neb. App. 221, 228 (2008).
8. A taxpayer is entitled to have its property in a county assessed uniformly and proportionately with other property in the county even though the result may be that it is assessed at less than actual value. *Equitable Life v. Lincoln Cty. Bd. of Equal.*, 229 Neb. 60, 61 (1988).
9. Where it is impossible to secure both the standards of the true value of a property for taxation and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the

law. *Cabela's Inc. v. Cheyenne Cty. Bd. of Equal.*, 8 Neb. App. 582 (1999).

10. The protesting taxpayer must show that their valuation when compared with similar property is grossly excessive. *Future Motels Inc. v. Custer Cty. Bd. of Equal.*, 252 Neb. 565 (1997).

### STATEMENT OF FACTS

The Statement of Fact as set forth in Appellant's brief is accepted as true and correct by Appellees.

### ARGUMENT

- I. The Court of Appeals should uphold TERC's decision. There is no clear error on the record. TERC correctly determined Appellees presented competent evidence of a gross disparity in valuation with respect to a comparable parcel and that Lancaster County failed a plain legal duty to equalize. TERC's decision was well-reasoned and supported by competent evidence.**

Appellate courts review decisions by TERC for error on the record.

*Darnall Ranch v. Banner Cty. Bd. of Equal.*, 276 Neb. 296, 302 (2008); Neb. Rev. Stat. § 77-5019 (2021). There is no clear error on the record in this case. TERC correctly applied settled law to determine the Moser parcel should be equalized with a comparable parcel presented by the taxpayers—the Morrison parcel—for tax years 2018 and 2019. TERC equalized the Moser parcel with respect to the

Morrison parcel by reducing the valuation of the Moser parcel by \$125,715 in 2018 and \$119,605 in 2019. Appellants disagree with this result and request the Court invent a new, higher standard for a taxpayer to prevail in a request for equalization.

The existing standard is clear. To overcome a presumption that the Board of Equalization acted reasonably, the protesting taxpayer must present competent evidence to the contrary, at which point the presumption disappears and reasonableness of valuation becomes one of fact based on all the evidence presented. *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 284 (2008). In this case, the Mosers presented competent evidence to both the Lancaster County Board of Equalization (“County Board”) and TERC that the value of the Moser parcel was grossly excessive with respect to a highly comparable parcel—the neighboring Morrison farm—for tax years 2018 and 2019.

TERC determined, and it is undisputed for purposes of this appeal, that the Moser and Morrison parcels are comparable for purposes of equalization. The Moser parcel is an agricultural parcel located in southwest Lancaster County. It consists of about 120 acres, of which about 90 acres were irrigated in tax years 2018 and 2019. The Morrison parcel is highly comparable. It is not merely a “single parcel” located elsewhere in rural Lancaster County, as Appellants suggest. The Morrison parcel is a neighboring farm. It is located a half-mile to the southwest of the Moser parcel. Like the Moser farm, it too was a partially irrigated farm in 2018 and 2019.

There is also no factual dispute that the Moser parcel was taxed at significantly higher rates than the Morrison parcel in 2018 and 2019. At the TERC hearing, the Assessor justified this discrepancy by explaining that the Morrison parcel was incorrectly assessed. He blamed the Morrison parcel's owner for failing to report the addition of a pivot to the Morrison parcel, which he testified would have resulted in an increased taxable rate for the Morrison parcel. The Assessor admitted plain error with respect to the Morrison parcel, but argued such error was not intentional and not the fault of the County Board.

TERC considered this testimony and reasoned that it is not the Mosers' burden to navigate valuation disputes between the County Board and other taxpayers. The protesting taxpayer need only show that their valuation when compared with similar property is grossly excessive. *Future Motels Inc. v. Custer Cty. Bd. of Equal.*, 252 Neb. 565 (1997). Then, such a showing triggers a duty to equalize. "Nebraska law makes clear that when properties are comparable . . . the Board has a plain duty to value them similarly." *Zabawa v. Douglas Cty. Bd. of Equal.*, 17 Neb. App. 221, 227 (2008). Based on settled law, TERC correctly determined that, when presented with such evidence, the County Board has a plain legal duty to equalize, even if the result is that the parcel is assessed at less than actual value. See *Equitable Life v. Lincoln Cty. Bd. of Equal.*, 229 Neb. 60, 61 (1988).

In proceedings before both the County Board and TERC, Mosers adduced competent evidence that the valuation of the Moser parcel was grossly excessive compared to the neighboring Morrison parcel. The County Board's failure to



equalize constitutes failure of a plain duty. “If a taxpayer’s property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief.” *Zabawa v. Douglas Cty. Bd. of Equal.*, 17 Neb. App. 221, 227 (2008). Therefore, TERC equalized the Moser parcel with the Morrison parcel for 2018 and 2019.

Unhappy with this result, Appellants now argue that a taxpayer must do more than identify a comparable property with grossly different valuations. Appellant requests this Court create a new standard by which protesting taxpayers would be required to present evidence of an unspecified number of comparable properties being grossly underassessed to justify equalization. The law, and the limited facts of this case, do not support the creation of a new, higher standard.

Appellant seems to be aggrieved that both the Moser parcel and the Morrison parcel would be assessed at below market value as a result of equalization. However, the case law recognizes the principal of fairness supersedes the objective of determining precise true value. “Where it is impossible to secure both the standards of the true value of a property for taxation and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.” *Cabela’s Inc. v. Cheyenne Cty. Bd. of Equal.*, 8 Neb. App. 582 (1999). Failure to equalize the Moser parcel with the neighboring Morrison parcel itself results in arbitrary and unreasonable taxation. “To set the valuation of similarly situated property, i.e., comparables, at materially different levels . . . is by definition unreasonable and arbitrary.” *Zabawa v. Douglas Cty. Bd. of Equal.*, 17 Neb. App. 221, 229 (2008).

Appellant draws several misplaced, sweeping conclusions based upon the “precedent” of the TERC decision in this case. The reality is that TERC simply equalized the Moser parcel with the neighboring Morrison parcel for tax years 2018 and 2019. Having been presented with information about improvements to the Morrison property, the Assessor is free to change the assessments of both parcels for subsequent tax years—and frankly has already done so. The greater “danger” to taxpayers is not to undo TERC’s equalization in this case, but to impose a new standard and thereby raise the bar for taxpayers seeking fair treatment with their neighbors based upon this single case.

### **CONCLUSION**

The TERC decision should stand. TERC correctly determined the Mosers’ met their burden by producing competent evidence of a gross discrepancy in valuation with respect to a comparable property. That is all the law requires to trigger a plain duty to equalize. Because the County Board failed in this plain duty, TERC equalized the Moser parcel with the comparable Morrison property for tax years 2018 and 2019. To undo TERC’s determination would impose a new, higher standard upon protesting taxpayers that is not justified by the law or facts in this case. For these reasons the Court should deny the County Board’s appeal.

## **CERTIFICATE OF COMPLIANCE**

The undersigned hereby certifies this Brief complies with the word count and typeface requirements of Neb. Ct. R. App. P. § 2-103. This Brief was prepared using Microsoft Word 2016 and contains 1,686 words, not including this Certificate of Compliance.

BRAD AND MARY MOSER,  
Appellees

A handwritten signature in blue ink, appearing to read 'DS', with a horizontal line extending to the right.

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# Certificate of Service

I hereby certify that on Friday, January 07, 2022 I provided a true and correct copy of this *Brief of Appellees Moser* to the following:

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Signature: /s/ David C. Solheim (24782)