

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Linda Schroeder,
Appellant,

v.

Gosper County Board of Equalization,
Appellee.

Case No: 15R 0009

Decision and Order Affirming the Decision
by the Gosper County Board of Equalization

Background

1. The Subject Property is a lakefront property, improved with a cabin and garage, located at Lot 2A, on Johnson Lake, in Gosper County, Nebraska. A legal description of the Subject Property is found in the Case File.
2. The Subject Property is assessed as an improvement on leased public land. The land is owned by the Central Nebraska Public Power and Irrigation District (Central).
3. The Gosper County Assessor (the County Assessor) assessed the Subject Property at \$193,348 for tax year 2015, consisting of \$88,000 for the leasehold interest in the land and \$105,348 for the improvements.
4. The Taxpayer protested this value to the Gosper County Board of Equalization (the County Board) and requested the same total assessed value of \$193,348 for tax year 2015, but consisting of \$17,940 allocated for the leasehold interest in the land and \$175,408 allocated for the improvements.
5. The County Board determined that the taxable value of the Subject Property was \$193,348 for tax year 2015.
6. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
7. A Single Commissioner hearing was held on August 15, 2017, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
8. Kent Schroeder was present at the hearing for the Taxpayer.
9. Todd D. Wilson, Gosper County Attorney, and Cheryl Taft, Gosper County Assessor, were present for the County Board.

Applicable Law

10. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹

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

11. The Commission’s review of the determination of the County Board of Equalization is de novo.²
12. 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
13. 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
14. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
15. 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
16. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸
17. Leased public property, other than property leased for a public purpose as set forth in subdivision (1)(a) of section 77-202, shall be taxed or exempted from taxation as if the property was owned by the leaseholder. The value of the property shall be determined as provided under section 77-201.⁹

Findings of Fact & Conclusions of Law

18. The Taxpayer’s only dispute in this appeal is the allocation of the land value and the improvement value of the Subject Property. The Taxpayer asserts that the assessment of the land component of the Subject Property is too high. The Taxpayer does not dispute the total actual value of \$193,348.

² See, Neb. Rev. Stat. §77-5016(8) (2016 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).

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(9) (2016 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) (2016 Cum. Supp.).

⁹ Neb. Rev. Stat. §77-202.11(1) (Reissue 2009).

19. Kent Schroeder provided information at the hearing regarding lease payments made by owners of cabins at Johnson Lake paid to Central. According to Mr. Schroeder, Central determined lease amounts based upon the quality of access to the lake, resulting in categories identified as Tiers 1 to 5. The Subject Property is a Tier 1 lot, with direct access to the lake.
20. The County Assessor did not rely on Central's Tier designations, but instead based the value of the leased lots on several criteria, which included the location of the lots.
21. The parties agreed there had been no recent vacant land sales at the lake. All of the lots had been improved for a number of years.
22. The County Assessor analyzed some vacant sales in the county, which she believed supported her assessment of the land component of the Subject Property.
23. The County Assessor had not conducted any analysis of the Johnson Lake properties involving extraction.¹⁰
24. The parties agreed that properties at Johnson Lake had been in high demand, and that there had been several "tear-down"¹¹ purchases in recent years.
25. The parties agreed that recent installations of sewer systems at the lake had substantially increased values of the lots.
26. Mr. Schroeder asserted that setback provisions and restrictions on removing cottonwood trees burdened some of the Lots. The Taxpayer did not quantify what effect these provisions and restrictions would have on the actual value of the Subject Property.
27. Mr. Schroeder asserted that the assessment increase on the Subject Property from prior years was too high. The assessed value for real property may be different from year to year, dependent upon the circumstances.¹² For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹³
28. The Taxpayer stated his opinion that the actual value of the Subject Property was \$300,000.
29. 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.
30. 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.

¹⁰ Extraction is "a method of estimating land value in which the depreciated cost of the improvements on the improved property is estimated and deducted from the total sale price to arrive at an estimated sale price for the land." *The Dictionary of Real Estate Appraisal*, Fourth Edition, Appraisal Institute, p.106, (2002).

¹¹ "Tear-down" purchases were described as sales where the intent of the purchaser is to tear down the existing improvements and rebuild on the same Lot. Usually, the new improvement have a substantially higher value than the prior improvements.

¹² See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹³ See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

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 2015 is affirmed.
2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$ 88,000
<u>Improvements</u>	<u>\$105,348</u>
Total	\$193,348

3. This Decision and Order, if no further action is taken, shall be certified to the Gosper County Treasurer and the Gosper County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 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 2015.
7. This Decision and Order is effective on August 18, 2017.

Signed and Sealed: August 18, 2017

Robert W. Hotz, Commissioner