

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

James M. Ochsner,
Appellant,

v.

Keith County Board of Equalization,
Appellee.

Case No: 16R 0001

Decision and Order Affirming Keith
County Board of Equalization

Background

1. The Subject Property is a residential parcel improved with a 2,166 square foot dwelling, with a legal description of: Lots 1 & 2, Blk 5, Searle's 2nd Add, Ogallala, Keith County, Nebraska.
2. The Keith County Assessor (the County Assessor) assessed the Subject Property at \$135,135 for tax year 2016.
3. The Taxpayer protested this value to the Keith County Board of Equalization (the County Board) and requested an assessed value of \$122,500 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$135,135 for tax year 2016.
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 May 31, 2017, at the Hampton Inn, North Platte, Nebraska, before Commissioner Nancy J Salmon.
7. Taxpayer James M. Ochsner was present at the hearing on behalf of the Taxpayer.
8. Randy Fair, Keith County Attorney, 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
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

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

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).

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. The Taxpayer stated that he felt the property was overvalued. He also noted that photographs depicting the interior of the Taxpayers’ home indicated that it was not well constructed.
17. The Taxpayer indicated that numerous factors which were ignored by the County Assessor resulted in the Taxpayers’ home being overvalued. He indicated that the home was not close to local schools and was not on a snow route (causing deterioration of the streets in the neighborhood). He also pointed out to the Commission that there were numerous rental homes in the neighborhood which lowered the values of owner-occupied residences. Another factor raised by the Taxpayer involved the existence of several nearby businesses which also served to lower the value of the Taxpayers’ home. Finally, he noted that there had been several incidents of vandalism and theft in the area.
18. The evidence submitted by the County indicated that the statutorily required six year review of residential properties in Keith County was performed in 2016. New costing, depreciation, and land tables were adopted. A determination of actual value may be made by mass appraisal and assessment purposes by using approaches identified in Nebraska statutes. See *Neb. Rev. Stat. § 77-112* (Reissue 2009). The approaches

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.).

identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods. For valuation purposes, the city of Ogallala was divided into four neighborhoods. In determining the tax valuation the subject property, the County Assessor utilized the cost approach. This approach appears to be the proper approach under the circumstances. In any case, the statute does not require use of all approaches. Actual value may be determined using any one of the accepted approaches.

19. The County Assessor, in order to accurately describe the critical characteristics of a property should inspect the subject property. The Nebraska Supreme Court has supported this conclusion.⁹ 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.¹⁰ While there is some dispute as to whether or not the Taxpayers actually denied an inspection, the Commissioner finds sufficient evidence to utilize this principle.
20. As noted above, the Taxpayer did provide some information regarding attributes of the area surrounding the Subject Property. However, no evidence was submitted regarding how any of such information could be quantified to establish a lower assessed value of the Subject Property. Based upon the foregoing, the Commission finds that the Taxpayer did not provide sufficient information for the Commission to grant the relief requested.
21. 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.
22. 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 2016, is Affirmed.
2. The taxable value of the Subject Property for tax year 2016 is:

| | |
|---------------------|------------------|
| Land | \$ 15,000 |
| <u>Improvements</u> | <u>\$120,135</u> |
| Total | \$135,135 |

⁹ *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 144 N.W.2d 161 (1966).

¹⁰ *Yarpe v. Lawless Distrib. Co.*, 7 Neb. App. 957, 587 N.W.2d 417 (1998).

3. This Decision and Order, if no further action is taken, shall be certified to the Keith County Treasurer and the Keith 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 2016.
7. This Decision and Order is effective on June 12, 2017.

Signed and Sealed: June 12, 2017

Nancy J Salmon, Commissioner