

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Shirley A. Smith,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 16R 0005

Decision and Order Affirming the
Determination of the Sarpy
County Board of Equalization

Background

1. The Subject Property is a rural residential property improved with a partially completed 2.5 story residence, with a legal description of: Tax Lot 5A, 14-12-11 (.51AC) Sarpy County, Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$159,286 for tax year 2016.
3. The Taxpayer protested this value to the Sarpy County Board of Equalization (the County Board) and requested an assessed value of \$0 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$159,286 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 August 28, 2017, at the Omaha State Office Building, 1313 Farnam, Third Floor, Room H, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Steven L. Smith was present at the hearing (Taxpayer).
8. Martin L. Becker, an Appraiser with the Sarpy County Assessor's Office (the County Appraiser) 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) (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).

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. The Subject Property is located on the Platte River in the southern portion of Sarpy County.
17. A residence on the Subject Property was damaged by a fire in 2009. The Taxpayers were granted a building permit to reconstruct the residence on the Subject Property in August of 2012, but fire reconstruction was halted in October of 2013, pursuant to a stop order issued by Sarpy County planning and zoning officials.
18. After a lawsuit against county officials the Taxpayers again obtained a building permit for the Subject Property in 2017, but as of the Assessment date of January 1, 2016, the residence on the Subject Property had been sitting uncompleted due to the stop order.
19. Prior to the stop order the Taxpayer had been performing much of the contracting of the construction on the residence himself. The Taxpayer stated that the residence had not been fully enclosed before the issuance of the stop order.
20. Due to the incomplete construction of the residence on the Subject Property, the elements had been able to intrude on the interior of the structure. The Taxpayer alleges that the

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.).

weathering of material on the interior of the Subject Property should reduce its assessed value.

21. The Taxpayer stated that it would take additional money and materials get the Subject Property to the level of the 2016 assessment, however the Taxpayer offered no information to quantify the amount of money or materials necessary.
22. Additionally the Taxpayer alleged that there were no comparable partially completed properties located in Sarpy County.
23. The County Appraiser presented property information regarding properties that would be similar to the Subject Property when completed. Because the Subject Property was not complete the County applied a percentage of value to the Subject Property based on the amount of completion of the residence located on the Subject Property as of the assessment date.
24. The County Appraiser inspected the Subject Property in December of 2015, and indicated that he was aware of the intrusion of the elements into the incomplete residence located on the Subject Property. The County Appraiser indicated that this condition was taken into account when determining the percentage of completion of the residence.
25. 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.
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 2016, is Affirmed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$ 17,947
<u>Improvements</u>	<u>\$141,339</u>
Total	\$159,286

3. This Decision and Order, if no further action is taken, shall be certified to the Sarpy County Treasurer and the Sarpy 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 November 22, 2017.

Signed and Sealed: November 22, 2017

Steven A. Keetle, Commissioner