

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Julien C. Van Haute,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 16R 0011

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

Background

1. The Subject Property is a rural farm parcel improved with a 2,590 square foot residence and a legal description of: Tax Lot 6A, 22-13-12 (19.31 AC)
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$442,701 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 \$338,775 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$431,838 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 29, 2017, at the Omaha State Office Building, 1313 Farnam, Third Floor, Room H, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Bob Van Haute was present at the hearing for Julien C. Van Haute (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
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 alleged that the correction of the square footage of the residence on the Subject Property combined with a new assessment model value resulted in too large an increase in value from the prior assessment year.
17. The information presented to the Commission indicates that the current square footage of the Subject Property used to determine the assessed value is correct.
18. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.¹⁰
19. The County Appraiser inspected the Subject Property in June of 2017. As a result of this inspection the County Appraiser determined that the amount and quality of basement finish and the number of plumbing fixtures for the residence recorded for the Subject Property were incorrect.

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

¹⁰ 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).

20. The County Appraiser stated that correcting these characteristics of the residence on the Subject Property would result in a reduced valuation of \$298,116 for the Improvements on the Subject Property for tax year 2016.
21. The County Board adopted the recommendation of the referee who heard the Taxpayers protest to the County Board. The Referee's recommendation was for an assessed value based on a calculation of the average of assessed values and weighted average assessed values for Sarpy County and surrounding counties, both influenced and uninfluenced.
22. At the hearing before the Commission however, the County Board presented information regarding the assessment of agricultural and horticultural land in Sarpy County by the County Assessor. This included information regarding 60 uninfluenced sales of agricultural and horticultural land from surrounding counties used to determine assessed values for tax year 2016.¹¹
23. The County Assessor alleged that the County Boards determination of the value of the agricultural and horticultural land on the Subject Property was incorrect and would create disequalization between the Subject Property and other similar properties in Sarpy County.
24. The County Assessor stated that the initial determination by the County Assessor, supported by these sales, of the assessed value of the agricultural and horticultural land on the Subject Property was equalized with other similar land in Sarpy County.
25. Based on all of the information presented to it the Commission determines that the assessed value for the land component of the Subject Property for tax year 2016 is \$140,434
26. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
27. The Taxpayer has 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 vacated.

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 Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$140,434
<u>Improvements</u>	<u>\$298,116</u>

¹¹ Sarpy County has determined that all agricultural and horticultural land in Sarpy is influenced by non agricultural and horticultural alternative uses and has applied Special Valuation. See, Neb. Rev. Stat. §77-1344 et. seq., See also, 2016 Reports and Opinion of the Property Tax Administrator for Sarpy County.

Total \$438,550

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 27, 2017.

Signed and Sealed: November 27, 2017

Steven A. Keetle, Commissioner