

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Paul D. Eurek,  
Appellant,

v.

Sherman County Board of Equalization,  
Appellee.

Case No: 16R 0181

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

**Background**

1. The Subject Property is a two story residential property located at 361 S. 12<sup>th</sup> Street, Loup City, with a legal description of: PT NW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> 18-15-14 Unpl. Tr. 1.33 AC. L.C.C., Sherman County, Nebraska.
2. The Sherman County Assessor (the County Assessor) assessed the Subject Property at \$207,480 for tax year 2016.
3. The Taxpayer protested this value to the Sherman County Board of Equalization (the County Board) and requested an assessed value of \$183,450 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$207,480 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 June 19, 2017, at the Holiday Inn Express, 508 2<sup>nd</sup> Avenue South, Kearney, NE, before Commissioner Steven A. Keetle.
7. Paul D. and Deborah Eurek were present at the hearing (Taxpayer).
8. Andrew W. Hoffmeister, Special Counsel for the Sherman County Board of Equalization and Sherie Kuszak Sherman County Assessor were 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.<sup>1</sup>
10. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
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

<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</sup> 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.”<sup>3</sup> 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.”<sup>4</sup>

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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer indicated that they appealed the assessed value of the Subject Property based on three issues:
  - a. Reclassification of the Subject Property from a 4 bedroom to a 3 bedroom home,
  - b. Adjusting the actual age and effective age calculations used by the County Assessor, and,
  - c. Reclassification of a portion of the living space from “base area” to “basement area.”
17. At the hearing before the single commissioner the Taxpayer did not present argument, or information or otherwise quantify the impact of arguments a and b listed above, indicating that the Taxpayer was proceeding only on issue c listed above, the issue of the reclassification of a portion of the living space from “base area” to “basement area.”
18. The portion of the Subject Property that the Taxpayer argues should be reclassified as basement area is used as a living room (the Living Room).
19. The Living Room shares a ceiling height with the adjoining rooms but it’s floor is approximately 22 inches lower than these adjoining rooms, putting the floor of the Living

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<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

Room approximately 13 inches below grade while the adjoining rooms are completely above grade.

20. The Taxpayer and County provided definitions of basement from multiple sources. The Taxpayer also provided opinions from architects that based on these definitions the Living Room portion of the Subject Property could be classified as basement.
21. The Assessor indicated that the Living Room portion of the Subject Property is unique in Sherman County and unlike any other portion of any property classified as basement in the County.
22. The County argued that the Living Room portion of the Subject Property would be comparable to above ground living space in Sherman County rather than basement living area in Sherman County, no matter how finished.
23. To support its argument the County offered a Uniform Appraisal Report Appraisal as of November 26, 2008, prepared in conjunction with the Taxpayer's purchase of the Subject Property. While the opinion of value indicated in this Appraisal is too far from the assessment date to be a reliable indicator of the value of the Subject Property in 2016, the appraiser who inspected the property indicated that the Subject Property had no basement and included the Living Room in the gross living area, or "base area," for purposes of determining market value.
24. The information provided to the Commission indicates that the Living Room area is most like the main level gross living area of other properties in Sherman County rather than the living area classified as basement.
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	\$ 8,450
<u>Improvements</u>	<u>\$199,030</u>
Total	\$207,480

3. This Decision and Order, if no further action is taken, shall be certified to the Sherman County Treasurer and the Sherman 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 October 18, 2017.

Signed and Sealed: October 18, 2017

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Steven A. Keetle, Commissioner