

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Michele Francis-Stine,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 17R 0034

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

Background

1. The Subject Property is a residential parcel located at 7109 S. 140th Street, Omaha, Sarpy County, Nebraska. The parcel ID is 010939423 and the legal description is Lot 158, Stonybrook South.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$216,375 for tax year 2017.
3. Michele Francis-Stine (the Taxpayer) protested this value to the Sarpy County Board of Equalization (the County Board) and requested an assessed value of \$198,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$216,375 for tax year 2017.
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 22, 2019, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska before Commissioner Robert W. Hotz.
7. Michele Francis-Stine was present at the hearing.
8. Andrea Gosnold-Parker, Chief Deputy Sarpy County Attorney, was present for the County Board. Jackie Morehead was present for the Sarpy County Assessor.

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 2018).

² See, Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *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 Taxpayer asserted that the condition of the Subject Property should have been rated at below average, while the County Assessor had adjusted the condition rating from average in tax year 2016 to average plus in tax year 2017. The Taxpayer provided photographic exhibits showing weathering and wear and tear to the outdoor deck, duct tape repairs to an indoor carpet, and the condition of some indoor floor tiling. The Taxpayer asserted that since taking possession of the property in 2005, she had made no major improvements. The Taxpayer did not quantify what effect the condition of the property would have on its value for tax year 2017.
17. The County Assessor inspected the Subject Property on July 12, 2016 and on March 19, 2018, and used a cost approach for assessment purposes. As a result of the inspection, the County Assessor made the subjective determination that the condition of the property was average plus as of the effective date of January 1, 2017.

³ *Brenner* at 283, 811.

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

18. 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.
19. 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 2017 is affirmed.
2. The taxable value of the Subject Property for tax year 2017 is \$216,375.
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 (Reissue 2018).
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 2017.
7. This Decision and Order is effective on August 19, 2020.

Signed and Sealed: August 19, 2020

Robert W. Hotz, Commissioner