

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Fred C. Wolford,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 14R 306

Decision and Order Affirming Sarpy
County Board of Equalization

1. A Single Commissioner hearing was held on January 23, 2015, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Salmon.
2. Fred C. Wolford (the Taxpayer) was present at the hearing.
3. Larry Houlton, Appraiser for Sarpy County Assessor’s Office, was present for the Sarpy County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is a residential parcel improved with a 2,430 square foot split-level single family dwelling, with a legal description of: Lots 147 & 148A Fontenelle Add, Bellevue, Sarpy County, Nebraska.

Background

5. The Sarpy County Assessor (the Assessor) assessed the Subject Property at \$182,915 for tax year 2014.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$158,000 for tax year 2014.
7. The County Board determined that the taxable value of the Subject Property was \$182,915 for tax year 2014.
8. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

9. The Commission’s review of the determination of the County Board of Equalization is de novo.¹ “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.”²

¹ See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

10. 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
11. 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
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. 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
14. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸
15. The Taxpayer purchased the Subject Property in January 2014. He asserted that the actual value of the Subject Property should be equal the purchase price of \$158,000.
16. The Taxpayer asserted that the Subject Property had severe items of deferred maintenance including a roof has wood shingles that need to be replaced, and leaks in the basement. He stated that he negotiated the sale price of the Subject Property with these items in mind.
17. The Appraiser stated that the sale was an estate sale. It was his opinion that the Subject Property did not sell for market value.
18. The Nebraska Supreme Court has consistently held that sales price is not synonymous with actual value.⁹ Nebraska Statutes permit the county assessor to value the Subject Property using the sales comparison approach, cost approach, income approach, or any commonly accepted mass appraisal technique and define actual value
19. “Evidence of sale price alone may not be sufficient to overcome the presumption that the board of equalization has valued the property correctly. But where, as in this case, the evidence discloses the circumstances surrounding the sale and shows that it was an arm’s

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(8) (2014 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) (2014 Cum. Supp.).

⁹ *Josten-Wilbert Vault Co. v. Board of Equalization*, 179 Neb. 415, 417, 138 N.W.2d 641, 643 (1965); *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 46, 328 N.W.2d 175, 180 (1982); *Dowd v. Board of Equalization*, 240 Neb. 437, 482 N.W.2d 583 (1992).

length transaction between a seller who was not under compulsion to sell and a buyer who was not compelled to buy, it should receive strong consideration.”¹⁰

20. “The terms *price*, *cost*, and *value* are used and defined carefully by appraisers.”¹¹ “The term *price* refers to the amount a particular purchaser agrees to pay and a particular seller agrees to accept under the circumstances surrounding their transaction.”¹² “Actual value, market value, and fair market value mean exactly the same thing.”¹³ Actual value is defined by Nebraska Statutes section 77-112 and means “the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market” and not the particular amount of a specific transaction.¹⁴ The distinctions between *price* and *actual value* are meaningful. They acknowledge that circumstances and factors may effect a particular purchase price to such an extent that it is of limited value or irrelevant in determining the actual value of a property. Factors which tend to illustrate that a transaction is not an arm’s length transaction harm the credibility and relevance of a purchase price in determining the actual value of a subject property.
21. Estate sales are generally considered to be non-arm’s length transaction.¹⁵
22. The Commission finds that the sale price of the Subject Property is not clear and convincing evidence on the actual value of the Subject Property because there is insufficient evidence that the sale price was part of an arm’s length transaction.
23. The Taxpayer provided the Commission with a document from Farmers Mutual Insurance Company stating there is no coverage for loss to or destruction of the roof on the Subject Property by wind or hail. The Taxpayer stated that while many of the houses in the neighborhood have wood shingles, it was difficult to obtain any insurance for the Subject Property, and that he was only able to obtain insurance if he agreed that the insurance would not cover the roof. He acknowledge that his wife preferred wood shingle roofs even though they are more expensive than asphalt shingles and difficult to insure.
24. “Functional obsolescence is the loss of value in a property improvement due to changes in style, taste, technology, needs, and demands and can be curable or incurable. Functional obsolescence exists when a property suffers from poor or inappropriate architecture, lack of modern equipment, wasteful floor plans, inappropriate room sizes, inadequate heating or cooling capacity, and so on.”¹⁶

¹⁰ *Id.* at 47, 328 N.W.2d at 181 (citations omitted).

¹¹ Appraisal Institute, *The Appraisal of Real Estate*, 13th Ed. (2008) at 21.

¹² *Id.*

¹³ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁴ Neb. Rev. Stat. §77-112 (Reissued 2009).

¹⁵ International Associations of Assessing Officers, *Fundamentals of Mass Appraisal*, at 73-74 (2011).

¹⁶ International Association of Assessing Officers, *Property Assessment Valuation*, at 260-61 (3rd ed. 2010).

25. The Commission finds that the wood shingles are an item of functional obsolescence. Generally, items of functional obsolescence contribute a negative value to the actual value of the Subject Property equal to the cost to cure the problem.¹⁷
26. In order to determine the cost to cure the wood shingles the Commission would need to know the cost to remove the wood shingles, the cost to replace the wood shingles with asphalt shingles, and whether there was any salvage value in the wood shingles.¹⁸ None of this information was provided to the Commission.
27. The Commission finds that without evidence sufficient to quantify the deferred maintenance the County Board's determination should be affirmed.
28. 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.
29. The Taxpayer has adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary, but has not quantified a reasonable alternative value. The decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Sarpy County Board of Equalization determining the taxable value of the Subject Property for tax year 2014, is Affirmed.
2. The taxable value of the Subject Property for tax year 2014 is:

Land	\$ 35,000
Improvements	\$147,915
Total	\$182,915
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 (2014 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 2014.

¹⁷ Appraisal Institute, *The Appraisal of Real Estate*, at 626-627 (14th ed. 2013).

¹⁸ See, *id.*

7. This Decision and Order is effective on January 30, 2015.

Signed and Sealed: January 30, 2015

Nancy J. Salmon, Commissioner