

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Marta F. Nieves
Appellant,

v.

Sarpy County Board of Equalization
Appellee

Case No: 12R 339

Decision Affirming Sarpy
County Board of Equalization

1. A Single Commissioner hearing was held on June 25, 2014, 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. Marta F. Nieves (the Taxpayer) was present at the hearing.
3. Lesa Ryan, Appraiser for Sarpy County Assessor’s Office was present for the Sarpy County Board of Equalization (the County).
4. The Subject Property (Subject Property) is residential parcel improved with a 2,192 square foot ranch dwelling, with a legal description of: Lot 54, Ashford Hollow, Sarpy County, Nebraska.

Background

5. The Sarpy County Assessor assessed the Subject Property at\$ 331,052 for tax year 2012.
6. The Taxpayer protested this value to the Sarpy County Board of Equalization and requested an assessed value of \$290,000 for tax year 2012.
7. The Sarpy County Board of Equalization determined that the assessed value of the Subject Property was \$311,744 for tax year 2012.
8. The Taxpayer appealed the determination of the County 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

¹ See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

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

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 Taxpayer asserted that the Assessed Value of the Subject Property had increased for 2012 and was uncertain what the increase was attributed to.
15. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁸ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.⁹
16. The Taxpayer asserted that the Subject Property was assessed higher than the other properties in the subdivision. The Taxpayer did not provide the Commission with property record cards for the other properties for a comparison.
17. The Appraiser stated that the Subject Property had been valued using the Cost Approach. She explained that depreciation was derived from the market using sales of comparable properties in the county and economic depreciation from sales of comparable properties within the Subject Property’s neighborhood.
18. The Taxpayer provided a fee appraisal to the County which was provided to the Commission. The appraiser was not available to answer questions. The effective date of

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

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) (2012 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 See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

⁹ *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

the appraisal was May 23, 2012. The Appraiser for the county noted that the appraiser used sales from different market sales than the Subject Property is located in and that three of the four sales were in a different time frame than the County Valuation. The Commission gives little weight to the appraisal for January 1, 2012 Valuation.

19. 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.
20. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and 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 value of the Subject Property for tax year 2012, is Affirmed.
2. The taxable value of the Subject Property for tax year 2012 is:

Land	\$ 41,000
<u>Improvements</u>	<u>\$270,744</u>
Total	\$311,744

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 (2012 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2012.
7. This order is effective on July 3, 2014.

Signed and Sealed: July 3, 2014

Nancy J. Salmon, Commissioner