

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

James K. Hoy,
Appellant,

v.

Richardson County Board of Equalization,
Appellee.

Case No: 13R 200

Decision and Order Affirming Richardson
County Board of Equalization

1. A Single Commissioner hearing was held on June 10, 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. James K. Hoy was present at the hearing for (Taxpayer).
3. Pam Vice, Richardson County Assessor, was present for the Richardson County Board of Equalization (the County).
4. The Subject Property (Subject Property) is residential parcel improved with a 1,944 square foot dwelling, with a legal description of: Lots 18-20, Block 1, Morehead, Falls City, Richardson County, Nebraska.

Background

5. The Richardson County Assessor assessed the Subject Property at \$165,461 for tax year 2013.
6. The Taxpayer protested this value to the Richardson County Board of Equalization and requested an assessed value of \$116,744 for tax year 2013.
7. The Richardson County Board of Equalization determined that the assessed value of the Subject Property was \$150,420 for tax year 2013.
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 valuation on the Subject Property had increased by 41.6% for tax year 2013, and that the countywide increase and national increase was just 10.5%
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 listed five properties with recent sales in the subject’s neighborhood. He asserted that the properties should for less than their assessed values. The Taxpayer calculated that on average the sale price was 79.49% of the assessed value. The Taxpayer asserted that the actual value of the Subject Property could be determined by decreasing his assessed value by 20.61% to comport with the ratio of sales price to assessed value of the five other properties. The Taxpayer calculated that the actual value of the Subject Property using this approach would be \$119,569. The Taxpayer did not provide the Commission with the property record cards of those five sales to determine the comparability of the Subject Property to the alleged comparable properties.

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).

17. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.¹⁰ The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.¹¹
18. The Taxpayer's approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the Subject Property for purposes of mass appraisal. Because the method is not identified in statute, proof of its professional acceptance as an accepted appraisal approach would have to be produced. No evidence has been presented to the Commission that this approach is a professionally accepted mass or fee appraisal approach. If the approach was shown to be professionally accepted, techniques for use of the approach would have to be developed.
19. The Commission reviewed the document provided by the Real Estate Company. The agent was not present to ask questions. It is noted that the agent only conducted an exterior inspection, and asserted that his opinion was not an appraisal.
20. In order to formulate a convincing opinion of value, the agent would need access to the interior of the building to ensure that judgments made in developing an opinion of value comported with actual characteristics of the property. The Commission gives the agent's opinion of value little weight.
21. Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution."¹² Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹³ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.¹⁴
22. The Commission notes on the property record card for an alleged comparable property the County applied a 30% economic depreciation for a sale in Falls City. The County Assessor was unable to explain why the alleged comparable was receiving a 30% economic depreciation and the subject property received a 10% economic. It was her opinion that the two properties were in different neighborhoods. The Taxpayer stated that the two properties were similar.
23. The Commission notes that there are differences in style and location between the Subject Property and the alleged comparable property. Other than general assertions, the Taxpayer did not provide any factual evidence quantifying what effect, if any, these differences would have on the economic depreciation attributable to the two properties.
24. The Commission finds that there is not clear and convincing evidence that the Subject Property's assessed value is grossly excessive.

¹⁰ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹¹ *Id.*

¹² *Neb. Const.*, Art. VIII, §1.

¹³ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹⁴ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

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 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 Richardson County Board of Equalization determining the value of the Subject Property for tax year 2013, is Affirmed.
2. The taxable value of the Subject Property for tax year 2013 is:

Land	\$ 9,780
Improvements	\$140,640
Total	\$150,420

3. This Decision and Order, if no further action is taken, shall be certified to the Richardson County Treasurer and the Richardson 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 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 2013.
7. This Decision and Order is effective on June 13, 2014.

Signed and Sealed: June 13, 2014

Nancy J. Salmon, Commissioner