

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Donald and Suzanne Heidemann,
Appellant,

v.

Jefferson County Board of Equalization,
Appellee.

Case No: 13R 203

Decision and Order Affirming the Jefferson
County Board of Equalization

1. A Single Commissioner hearing was held on February 27, 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. Donald and Suzanne Heidemann were present at the hearing (Taxpayers).
3. Vicki Haskell, Jefferson County Assessor, was present for the Jefferson County Board of Equalization (the County).
4. The Subject Property (Subject Property) is a residential parcel improved with a 1,113 square foot 1 ½ story single family dwelling, with a legal description of: Lots 13-16, Blk 12, Original Town, Plymouth, Jefferson County, Nebraska.

Background

5. The Jefferson County Assessor assessed the Subject Property at \$ 14,028 for tax year 2013.
6. The Taxpayers protested this value to the Jefferson County Board of Equalization and requested an assessed value of \$8,400 for tax year 2013.
7. The Jefferson County Board of Equalization determined that the assessed value of the Subject Property was \$10,032 for tax year 2013.
8. The Taxpayers 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 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) (2012 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 Taxpayers alleged the Subject Property’s improvement component was overvalued for the 2013 tax year. They did not dispute the assessed value of the land.
15. The Taxpayers provided the Commission with property record cards from five sales in Plymouth, Nebraska, which took place between July 16, 2010, and July 30, 2013. The Taxpayers alleged that the assessed valuations of these alleged comparable properties were higher than their sales prices.
16. The Taxpayers asserted that these five alleged comparable properties, sold on average for 46% of their assessed values. The Taxpayers asserted that the correct valuation of the Subject Property could be computed by reducing the County Assessor’s original assessed value of the improvements by 46% resulting in an actual value of the improvements of \$4,623.
17. In the alternative, the Taxpayers asserted that it would be reasonable to determine the actual value of the Subject Property by removing the comparable properties with the lowest and highest percentage difference between assessed value and sales price from the five alleged comparables and then adjusting the Subject Property’s improvement value by the median percent difference of the remaining alleged comparable sales. The Taxpayers asserted that the median percentage difference was 41% which results in an improvement value of \$4,120.
18. The County Assessor stated that three of the Taxpayers’ alleged comparable sales were not arm’s length transactions, were not used by the county in setting the 2013 assessed

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).

valuations, and were not appropriate for use in determining the actual value of the Subject Property.

19. The County Assessor provided a list of all the sales in Plymouth, Nebraska between November 2010 and December 2013.
20. Only one of the sales offered by the Assessor was of the same “Fair” condition rating as the Subject Property, and that sale had a higher “Average” condition rating, fewer square feet, and a basement which would make it not comparable to the Subject Property.
21. None of the sales offered by the Taxpayers were of the same “Fair” condition rating as the Subject Property.
22. None of the sales offered by the Taxpayers or the Assessor were comparable to the subject property.
23. The County Assessor testified that in preparation for the Taxpayer’s County Board protest hearing she had performed an exterior inspection of the Subject Property, but had been denied entrance to the improvement by the Taxpayers and could not, therefore, perform an interior inspection. Based on her exterior inspection, however, the County Assessor increased the amount of physical depreciation attributable to the Subject Property, and at the County Board hearing, put forward a new opinion of value which was adopted by the County Board valuing the improvement component of the Subject Property at \$5,552.
24. The County Assessor stated that a cost approach was used to value the Subject Property for both her opinions of value (before and after the exterior inspection). The County Assessor asserted that the decrease in her opinion of value was the result of deferred maintenance visible during the exterior inspection.
25. The Parties agreed that the Subject Property was occupied by a tenant and that the Taxpayers received \$210 per month rent for the Subject Property.
26. The County Assessor stated that while she relied primarily on the cost approach to value the Subject Property if she were to perform an income approach analysis of the subject property the value determined would be between \$21,000 and \$10,032 which she stated supported her opinion of value for the Subject Property and indicated that it was not overassessed.
27. The Taxpayers were further concerned that sales prices for properties in the market area and the assessed values were not identical.
28. The County Assessor explained that if she were to set the assessed values of sold properties at their sales prices, then she would violate Nebraska law by sales chasing.
29. The County Assessor further indicated that she was aware that the County Assessor’s mass appraisal model was generally overvaluing real property in the Subject Property’s market area as a class. She stated that in 2015 the County Assessor’s Office intended to reappraise the market area in order to resolve the problem.

30. The Commission notes that the Reports and Opinions for the Subject Property's market area for tax year 2013 indicate that the model used by the County Assessor was producing values for properties in Plymouth at 105% of actual value.
31. The Taxpayers failed to produce evidence to indicate that the assessed value of the Subject Property was greater than its actual value.
32. Additionally, while the Taxpayers expressed an opinion of value for the Subject Property, the opinions were not based upon accepted appraisal techniques.
33. The Commission finds that it was unreasonable or arbitrary for the County Board to rely on a model for the determination of the actual value of the Subject Property when all evidence and testimony indicates that the model was not producing values within statutorily required levels.
34. The Taxpayers have produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
35. The Taxpayers have 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 Jefferson 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	\$ 4,480
<u>Improvements</u>	<u>\$ 5,552</u>
Total	\$10,032

3. This Decision and Order, if no further action is taken, shall be certified to the Jefferson County Treasurer and the Jefferson 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 March 6, 2014.

Signed and Sealed: March 6, 2014

Nancy J. Salmon, Commissioner