

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Jeffrey P. Mell,  
Appellant,

v.

Sarpy County Board of Equalization,  
Appellee.

Case No: 14R 015

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. Jeffrey P. Mell (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 1,176 square foot ranch single family dwelling, with a legal description of: Lot 6A3 Boulevard Terrace, Bellevue, Sarpy County, Nebraska.

**Background**

5. The Sarpy County Assessor (the Assessor) assessed the Subject Property at \$105,231 for tax year 2014.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$82,000 for tax year 2014.
7. The County Board determined that the taxable value of the Subject Property was \$105,231 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.<sup>1</sup> “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.”<sup>2</sup>

<sup>1</sup> 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).

<sup>2</sup> *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.”<sup>3</sup> 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.”<sup>4</sup>
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.<sup>5</sup>
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
14. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>
15. The Taxpayer asserted that the Subject Property was overvalued and that the overvaluation was demonstrated by: (1) an examination of sales of comparable properties within one block of the Subject Property; and (2) a comparison of the Subject Property and a neighboring similar property.
16. The Taxpayer asserted that all sales of comparable properties on the Subject Property’s block have sold for prices below their 2014 assessed values. He asserted that the sale of the comparable properties indicated that the Assessor had overvalued all properties on the Subject Property’s block. He provided the Commission with property record cards from three sales. The Commission notes that the three sales occurred on 6/29/2009 (Comp 1), 10/27/2011 (Comp 2), and 05/19/2011 (Comp 3).
17. At the hearing the Appraiser indicated that the sale of Comp 1 on 6/29/2009 was not an arm’s length transaction. An arm’s length transaction is “[a] transaction between unrelated parties under no duress.”<sup>9</sup> Arm’s length transactions are the basis for determining the actual value of real property. However, non-arm’s length transactions are poor indicators of the actual value of real property and should seldom, if ever, be

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<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

<sup>9</sup> Appraisal Institute, *The Dictionary of Real Estate Appraisal*, at 18 (4th ed. 2002).

used.<sup>10</sup> The Commission finds that the sale of Comp 1 on 6/29/2009 is not a strong indicator that the County Assessor had overvalued all real property on the Subject Property's block because it was a non-arm's length transaction.

18. Comp 2 sold on 10/27/2011 for significantly less than the 2009 assessed value, however, the conditions of this sale are unknown and not verified. As mentioned in the analysis of Comp 1, not all sales are reliable indicators on actual value. In order to determine the reliability of the sale as an indicator of actual value the circumstances surrounding the sale must be verified.<sup>11</sup> Because the conditions surrounding the sale of Comp 2 are not verified the Commission gives the sale little weight.
19. Comp 3 sold on 05/19/2011 for 96% of its 2011 assessed value.<sup>12</sup> A 4% difference between sale price and assessed value is not an indication that the value placed on Comp 3 was unreasonable or arbitrary. A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds.<sup>13</sup> "A decision is arbitrary when it is made in disregard of the facts or circumstances and without some basis which would lead a reasonable person to the same conclusion."<sup>14</sup> The appraisal of real estate is not an exact science.<sup>15</sup> The Commission finds that the County Assessor and the purchaser of Comp 3 differed on opinions of the actual value of Comp 3 by 4%. The Commission finds that this is not sufficient evidence that the assessed values placed on all the properties on the Subject Property's block were either arbitrary or unreasonable.
20. The Appraiser provided the sales roster used to determine the assessed value of the Subject Property which was adopted as the County Board's determination. The sales roster indicates the Subject Property was assessed using relevant sales, and the Commission notes that the average sale price was \$151,331. The Appraiser also asserted that there were several sales that sold for more than their assessed values. He provided a document listing the sales within the Subject Properties neighborhood and explained that some sold for more than the assessed value and some sold for less. He also noted that there are outliers for different reasons.
21. The Commission finds that there is not clear and convincing evidence that all real property on the Subject Property's block was overvalued.
22. The Taxpayer additionally asserted that the Subject Property's assessed value was grossly excessive when compared to a neighboring property. He asserted that the alleged comparable had an identical floor plan, had more square feet, new roof and siding, did not have concrete issues, and was not under construction. He opined that the actual value for the Subject Property was \$75,000. He arrived at the valuation using the assessed value

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<sup>10</sup> See, Appraisal Institute, *The Appraisal of Real Estate*, at 385 (14<sup>th</sup> ed. 2013).

<sup>11</sup> See, *id.*

<sup>12</sup> \$200,000 sale price / \$208,000 assessed value = .96 rounded.

<sup>13</sup> See, *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 401-02, 603 N.W.2d 447, 455-56 (1999).

<sup>14</sup> *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736 (2000) (citations omitted).

<sup>15</sup> *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977).

of the alleged comparable property and subtracting off for concrete work, a new roof, and new siding. He did not provide a property record for the alleged comparable.

23. The Appraiser stated that the Subject Property had an attached garage that the alleged comparable did not have. He also stated that the alleged comparable did not have new windows and that the Subject Property did have some new siding. He provided the Commission with property record cards from three sales in the Subject Property's neighborhood with their sale price and noted that they sold for a sale price greater than the assessed valuation of the Subject Property. The Commission notes that the three sales were similar in size.
24. The Appraiser stated he had adjusted the physical depreciation of the Subject Property for the incomplete siding. The Commission notes that the depreciation for the Subject Property is \$58,075 if \$13,000 is attributable to the incomplete siding then remainder of the depreciation (\$45,075) would be attributable to other items of deferred maintenance.
25. Without the property record card for the alleged comparable next door, the Commission is unable to compare the assigned depreciations and characteristics of the properties. It is noted that on page 74 of the documents provided by the County Board, the alleged comparable received 45% depreciation and is 9 years older than the Subject Property. The property record card for the Subject Property indicates that it received 36% physical depreciation and 12% economic depreciation for a total depreciation factor of 43%.
26. The Commission finds that the evidence indicates that the depreciation assigned to the Subject Property is sufficient to take into account items of deferred maintenance. Additionally, the Commission finds that there is insufficient evidence to determine if the Subject Property was treated uniformly with the neighboring property.
27. 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.
28. 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 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	\$ 29,000
Improvements	\$ 76,231
Total	\$105,231

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.
7. This Decision and Order is effective on January 27, 2015.

Signed and Sealed: January 27, 2015

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Nancy J. Salmon, Commissioner