

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jerry C. Park,
Appellant,

v.

Saunders County Board of Equalization,
Appellee.

Case No: 14R 103

Decision and Order Affirming Saunders
County Board of Equalization

1. A Single Commissioner hearing was held on January 16, 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. Jerry C. Park (the Taxpayer) was present at the hearing.
3. Terry Kubik, Appraiser for Saunders County Assessor’s Office, was present for the Saunders County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is a residential parcel improved with a 2,560 square foot 2 story single family dwelling, with a legal description of: Pt Govt Lot 7 (SE) 28-17-8 (AKA Jokers High Subdivision Lts 1&2 – 2 acres), Saunders County, Nebraska.

Background

5. The Saunders County Assessor (the Assessor) assessed the Subject Property at \$261,980 for tax year 2014.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$151,980 for tax year 2014.
7. The County Board determined that the taxable value of the Subject Property was \$261,980 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.); See also, *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 asserted that the County Board did not take into consideration that the Subject Property is located across the road from All Metals Market property, a scrap metal yard. He asserted that because of the location, the Subject Property should receive a \$75,000 external obsolescence.
16. The Taxpayer arrived at his opinion of obsolescence by taking an opinion of actual value of the property next door as determined in an appraisal for that property with an effective date of November 6, 2012, of \$295,000, and subtracting the sale price of \$220,000 of the property next door on January 30, 2014. The appraiser was not present for the County Board or Commission to ask questions. The Commission notes that the comparable properties used by the Appraiser were several miles from the Subject Property. Further the property record files for the comparable properties were not presented to the Commission so the Commission cannot determine if the properties are truly comparable to the Subject Property.⁹

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 Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location. See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010). Without the property record files for the alleged comparable properties and without witnesses with personal knowledge the Commission is unable to determine if the

17. The Appraiser for the Assessor stated that the Subject Property had been appraised using the Sales Comparison Approach. He provided the Commission with four sales ranging from \$94 to \$145 per square foot. He explained the property record card for the Subject Property and noted that the Subject Property was appraised at \$88.66 per square foot. He explained sales are used to develop a model using location, size, style, quality, condition and physical characteristics and the Subject Property was within the range.
18. The Assessor asserted that the Subject Property's location may be negatively influenced by All Metals Products located across the road, but that any negative influence was likely offset by the Subject Property's proximity to and view of the Platte River. The Appraiser supported this assertion by referring to the sale of the property located next door to the Subject Property on January 30, 2014, for \$220,000. He stated that the home next door to the Subject Property was also across the road from All Metals Products, was only 1,190 square foot, and sold for \$145 per square foot.
19. The Commission notes that if the \$75,000 economic obsolescence was applied to the actual value of the Subject Property, it would be valued at only \$73.04 per square foot.¹⁰
20. 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.
21. 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 Saunders 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
<u>Improvements</u>	<u>\$226,980</u>
Total	\$261,980

3. This Decision and Order, if no further action is taken, shall be certified to the Saunders County Treasurer and the Saunders County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).

alleged comparable properties have similar physical characteristics as the Subject Property including a similar river view.

¹⁰ $(\$261,980 - \$75,000) / 2,560 \text{ sq. ft.} = \$73.04 \text{ per sq. ft.}$

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 21, 2015.

Signed and Sealed: January 21, 2015

Nancy J. Salmon, Commissioner