

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jerry C. Park,
Appellant,

v.

Saunders County Board of Equalization,
Appellee.

Case No: 14R 104

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 an unimproved residential parcel, with a legal description of: Prt Govt Lot 7 28-17-8 (Lot 3&4 Joker’s High), 1.19 Acres, Saunders County, Nebraska.

Background

5. The Saunders County Assessor (the Assessor) assessed the Subject Property at \$15,480 for tax year 2014.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$500 for tax year 2014.
7. The County Board determined that the taxable value of the Subject Property was \$15,480 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.), *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 Subject Property was overvalued as it was only 1.19 acres and in his opinion, could not be built upon. He asserted that he had only paid \$500 for the two lots. The Commission notes on the Property Record that the sale was a Sheriff Deed in October of 2001. He provided the Commission with a photo of the vacant lots. He noted there were no improvements on the lots and that they were covered with trees and that only a small structure could be built without spending several dollars to have the lots cleared and prepared for building.
16. The Appraiser for Saunders County disagreed with the Taxpayer and stated in his opinion a structure could be constructed on the lots with some work. He provided the Commission with three sales of vacant lots. He noted that the Subject Property was only valued at approximately 50 percent of his opinion of market value.
17. The Taxpayer’s only evidence of value was a sale price of the Subject Property more than a decade previous as part of a non-arm’s length transaction.
18. Non-arm’s length transactions should not be used to determine that actual value of real property.⁹ The inherent characteristics of these sales make them unreliable indicators of value.¹⁰

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 Appraisal Institute, *The Appraisal of Real Estate*, at 304 (13th ed. 2008)..

19. Further, the sale of the Subject Property was more than a decade previous to the date of assessment. Sales used to determine the actual value of the Subject Property should have occurred close to the date of assessment.¹¹
20. For the forgoing reasons, the Commission finds that the October 2011 sale price is not a reliable indicator of the actual value of the Subject Property.
21. The Appraiser and Taxpayer disagreed whether or not the Subject Property was buildable. Neither the Taxpayer nor the Appraiser produced more than oral testimony and individual opinions to support their claims.
22. The burden on the Taxpayer is to show by clear and convincing evidence that the County Board's determination was unreasonable or arbitrary.¹² Two competing opinions amount to a mere difference of opinion. A mere difference of opinion is not sufficient to meet the burden imposed on the Taxpayer.¹³
23. 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.
24. 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 \$15,480.
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.).
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.

¹⁰ International Associations of Assessing Officers, *Fundamentals of Mass Appraisal*, at 73-74 (2011).

¹¹ Appraisal Institute, *The Appraisal of Real Estate*, at 301-302 (13th ed. 2008).

¹² *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 124-25, 825 N.W.2d 447, 452 (2013) (quoting *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008)).

¹³ *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 124-25, 825 N.W.2d 447, 452 (2013) (quoting *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008)).

7. This Decision and Order is effective on January 21, 2015.

Signed and Sealed: January 21, 2015

Nancy J. Salmon, Commissioner