

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

Donald A. Krug,  
Appellant,

v.

Scotts Bluff County Board of Equalization,  
Appellee.

Case No: 14R 310

Decision and Order Reversing Scott Bluff  
County Board of Equalization

1. A Single Commissioner hearing was held on June 9, 2015, at Hampton Inn North Platte, 200 Platte Oasis Parkway, North Platte, Nebraska, before Commissioner Salmon.
2. Donald A. Krug (the Taxpayer) was present at the hearing.
3. Amy Ramos, Scotts Bluff County Assessor, was present for the Scotts Bluff County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is residential parcel improved with a 1404 square foot double wide mobile home and an 80 square foot yard sheet, with a legal description of: Lt 18A Hunt’s Tracts amended lot 18 (.50), Scottsbluff, Scotts Bluff County, Nebraska.

Background

5. The Scotts Bluff County Assessor (the Assessor) assessed the Subject Property at \$84,315 for tax year 2014.
6. The Taxpayer protested this value to the Scotts Bluff County Board and requested an assessed value of \$30,000 for tax year 2014.
7. The Scotts Bluff County Board determined that the taxable value of the Subject Property was \$84,315 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 for 2014. He did not dispute the land valuation, only the improvement valuation. The improvements on the Subject Property consist of a year 2000 double wide mobile home and a yard shed.
16. The Taxpayer asserted that he paid \$20,000 for the double wide mobile home. After the purchase the Taxpayer placed the mobile home on concrete blocks on the Subject Property without a basement beneath it. He testified that since the purchase of the improvements he has painted and installed new carpet.
17. The Taxpayer’s opinion of value for the double wide and yard shed is \$45,000 to \$48,000.
18. The County Assessor asserted that the sale of the mobile home to the Taxpayer was not an arms-length transaction. She asserted that the seller of the mobile home was Green Tree Financing and was likely a sale of a repossessed mobile home.
19. The Taxpayer provided advertisements from a local dealer indicating the sale prices of two new double wide mobile homes, including delivery and set up, of \$70,000 to \$79,900.
20. The County Assessor provided a listing of all double wide mobile homes in Scottsbluff. The mobile homes are situated on properties in varying neighborhoods within the city.

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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.).

21. When comparing the documents from the Taxpayer with the list, the Commission notes several differences between the mobile home on the Subject Property and those located on the alleged comparable properties, including but not limited to, differences in size, quality, condition, HVAC, and use.
22. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>9</sup> The Commission finds that the properties included in the Taxpayer's alleged comparable properties are not truly comparable.
23. The County Assessor inspected the Subject Property in 2015. Based upon her observations made during the inspection, the County Assessor asserted that a change in value was necessary. She expressed a new opinion of value of tax year 2014, and provided a new property record to the Commission for review. The Commission gives great weight to the Assessor's revised opinion value. The Commission finds that the actual value of the Subject Property is \$67,745.
24. 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.
25. The Taxpayer has 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 vacated.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Scotts Bluff County Board of Equalization determining the taxable value of the Subject Property for tax year 2014, is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2014 is:

Land	\$10,540
Improvements	\$57,205
Total	\$67,745
3. This Decision and Order, if no further action is taken, shall be certified to the Scotts Bluff County Treasurer and the Scotts Bluff 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.

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<sup>9</sup> See generally, *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers (2010) at 169-79.

6. This Decision and Order shall only be applicable to tax year 2014.
7. This Decision and Order is effective on June 17, 2015.

Signed and Sealed: June 17, 2015

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Nancy J. Salmon, Commissioner