

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Harvey Varenhorst,
Appellant,

v.

Otoe County Board of Equalization,
Appellee.

Case No: 14R 290, 15R 107 & 15R 108

Amended Decision and Order Affirming
County Board of Equalization
(Correction of Values)

1. A Single Commissioner hearing was held on June 23, 2016, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Steven A. Keetle.
2. Harvey Varenhorst was present at the hearing on behalf of himself (“the Taxpayer”).
3. John R. Palmtag, Deputy Otoe County Attorney, and Therese Gruber, Otoe County Assessor, were present for the Otoe County Board of Equalization (“the County Board”).
4. The Subject Property in Case Nos 14R-290 and 15R-108 is located at 417 4th Rue, Nebraska City, Nebraska, with a legal description of: N ½ Lots 9 & 10 & All of Lot 11 Blk 29 Kearney Addition to Nebraska City, Otoe County, Nebraska (“the Subject Property”).
5. The Subject Property in Case No 15R-107 is located at 415 4th Rue, Nebraska City, Nebraska, with a legal description of: S ½ Lots 9 & 10 Blk 29 Kearney Addition to Nebraska City, Otoe County, Nebraska (“the Subject Property”).

Background

6. The Otoe County Assessor (“the Assessor”) assessed the Subject Property in Case No 14R-290 at \$15,330 for tax year 2014.
7. The Taxpayer protested this value to the County Board and requested an assessed value of \$9,217 for tax year 2014.
8. The County Board determined that the taxable value of the Subject Property was \$15,330 for tax year 2014.
9. The Assessor assessed the Subject Property in Case No 15R-107 at \$5,690 for tax year 2015.
10. The Taxpayer protested this value to the County Board and requested an assessed value of \$4,010 for tax year 2015.
11. The County Board determined that the taxable value of the Subject Property was \$5,690 for tax year 2015.
12. The Assessor assessed the Subject Property in Case No 15R-108 at \$27,890 for tax year 2015.

13. The Taxpayer protested this value to the County Board and requested an assessed value of \$11,970 for tax year 2015.
14. The County Board determined that the taxable value of the Subject Property was \$27,890 for tax year 2015.
15. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (“the Commission”).

Issues & Analysis

16. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
17. The Commission’s review of the determination of the County Board of Equalization is de novo.² “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.”³
18. 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.”⁴ 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.”⁵
19. 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.⁶
20. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² 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).

³ *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁴ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁵ *Id.*

⁶ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

21. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁸
22. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁹
23. The Taxpayer requested that the Subject Properties be assessed at the same amount as the 2016 tax year assessment or in the alternative at the same amount as the final 2013 assessment.
24. The assessed value for real property may be different from year to year, dependent upon the circumstances.¹⁰ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹¹ For this same reason, the Commission finds that a subsequent year's assessment is not relevant to the prior year's valuation.
25. The Taxpayer alleged that the Subject Properties were not being assessed at the same level as comparable properties.
26. The Taxpayer offered the property record files of several different properties that he asserted were comparable to the Subject Properties.
27. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹²
28. The properties offered by the Taxpayer as comparables for the Subject Properties all had differences in location or physical characteristics from the Subject Properties and were therefore not comparable to the Subject Property.
29. The County indicated that in Otoe County residential lot values are determined by neighborhood and that residential improvement values are determined using the cost basis throughout the entire county.
30. The County offered two sets of property record files of several different properties to support its statements regarding the assessment of land and improvements in the county.
31. The Taxpayer alleged that the condition of the Subject Properties was less than that indicated by the County's records.
32. The depreciation applied to the Subject Properties demonstrates that the County did consider the condition of the Subject Properties when determining value for tax years 2014 and 2015.
33. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.

⁸ 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).

⁹ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹⁰ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹¹ See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

¹² See generally, *International Association of Assessing Officers, Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

34. 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 Otoe County Board of Equalization determining the taxable value of the Subject Properties for tax year 2014 and 2015 are Affirmed.
2. The taxable values of the Subject Properties for tax years 2014 and 2015 are:

14R 0290

Land	\$ 5,600
<u>Improvements</u>	<u>\$ 9,730</u>
Total	\$15,330

15R 0107

Land	\$2,800
<u>Improvements</u>	<u>\$2,890</u>
Total	\$5,690

15R 0108

Land	\$ 5,600
<u>Improvements</u>	<u>\$22,290</u>
Total	\$27,890

3. This Amended Decision and Order, if no further action is taken, shall be certified to the Otoe County Treasurer and the Otoe 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 Amended Decision and Order shall only be applicable to tax year 2014 and 2015.
7. This Amended Decision and Order is effective on July 25, 2016.

Signed and Sealed: July 25, 2016

Steven A. Keetle, Commissioner