

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

William H. Newman
Appellant,

v.

Platte County Board of Equalization,
Appellee.

Case No: 15R 0010

Decision and Order Affirming Platte
County Board of Equalization

1. A Single Commissioner hearing was held on June 30, 2016, at Rivers Edge Convention Center, 265 33rd Ave. Columbus, NE, before Commissioner Nancy J. Salmon.
2. William H. Newman (Taxpayer) was present at the hearing.
3. Elizabeth Lay, Deputy Platte County Attorney, was present for the Platte County Board of Equalization (the County Board).
4. Tom Placzek, the Platte County Assessor was present at the hearing.
5. The Subject Property (Subject Property) is a residential parcel improved with a one story dwelling. The legal description is: Lot 4, Blk B, Glenwood Estates, Columbus, Platte County, Nebraska.

Background

6. The Platte County Assessor (the County Assessor) assessed the Subject Property at \$192,865 for tax year 2015.
7. The Taxpayer protested this value to the County Board and requested an assessed value of \$161,295 for tax year 2015.
8. The County Board determined that the taxable value of the Subject Property was \$182,685 for tax year 2015.
9. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).

Applicable Law

10. 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).

11. 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
12. 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
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
14. 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
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact and Conclusions of Law

16. The Taxpayer asserted that the Subject Property was overvalued due to its condition.
17. In support of his position, he stated that the flooring of the Subject Property was damaged. He provided four photographs of laminate flooring with water damage. He also provided a photograph of carpeting with pet stains.
18. The Taxpayer asserted that there was dry rot on several windows, outdated kitchen countertops, and damage to the vinyl siding. He provided three photographs of windows with dry rot and cracking, one of the kitchen countertops, and five photographs of the damaged siding.
19. The Taxpayer also stated that he listed the Subject Property in 2010 and was unable to get a serious bid. The Subject Property is no longer on the market and the Taxpayer has not had a current appraisal of the property.
20. The Taxpayer did not provide any estimates on the cost to cure the deficiencies he pointed out.

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.).

21. The County Assessor did an interior and exterior inspection of the Subject Property in 2015. At that time, he changed the condition of the property from “average+” to “average” based on some of the issues raised by the Taxpayer.
22. The County Assessor also provided the Commission with six comparable sales that he believed supported his valuation of the Subject Property. Of the six, the County Assessor had done physical inspections on two of the properties.
23. There were no sales in the Subject Property’s neighborhood, so the comparable sales used by the County Assessor were in different but similar neighborhoods. Despite various differences in the properties, the County Assessor believed that these six properties were valid for comparison purposes. Based on his review of these properties, he concluded that the Subject Property’s assessed value per square foot was within range of the comparable properties.
24. The Commission finds that the Taxpayer’s assertions regarding the Subject Property were not quantified in terms of actual value. They do not amount to clear and convincing evidence that the action of the County Board was unreasonable or arbitrary.
25. 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.
26. 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 Platte County Board of Equalization determining the taxable value of the Subject Property for tax year 2015, is Affirmed.
2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$30,000
Improvements	\$152,685
Total	\$182,685
3. This Decision and Order, if no further action is taken, shall be certified to the Platte County Treasurer and the Platte 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 2015.
7. This Decision and Order is effective on July 6, 2016.

Signed and Sealed: July 6, 2016

Nancy J. Salmon, Commissioner