

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Norman Parde, Jr.,
Appellant,

v.

Gage County Board of Equalization,
Appellee.

Case No: 15A 0083

Decision and Order Reversing Gage
County Board of Equalization

Background

1. The Subject Property is an agricultural parcel improved with a 1,878 square foot dwelling and several outbuildings, with a legal description of: W ½ NW ¼ 28-5-8, cont. 80 Ac, Gage County, Nebraska.
2. The Gage County Assessor (the County Assessor) assessed the Subject Property at \$642,210 for tax year 2015.
3. The Taxpayer protested this value to the Gage County Board of Equalization (the County Board) and requested an assessed value of \$436,580 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$642,210 for tax year 2015.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on March 15, 2016, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Nancy J. Salmon.
7. Robert M. Schafer, legal counsel, was present at the hearing for the Taxpayer (Taxpayer).
8. Patricia Milligan, Gage County Assessor, was present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission’s review of the determination of the County Board of Equalization is de novo.²
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

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

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 & Conclusions of Law

16. The Taxpayer asserts that the dwelling on the Subject Property has not been equalized with similar properties in Gage County. He provided the Commission with three alleged comparable properties. He is not disputing the valuation of the farm buildings or land valuation.
17. The alleged comparable properties provided by the Taxpayer had a wide range of sizes, basement finish, build quality, and size of garages. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹ The Commission finds that the properties included in the Taxpayer’s alleged comparable properties are not truly comparable. The Commission also notes that the taxpayer did not quantify the amount of adjustments needed to be made to the comparable properties.
18. The Taxpayer asserted that the Subject Property did not have a fireplace and the total above ground square foot of the living area was 43 square foot different than the county had appraised it at and there was less finished square feet in the basement.

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

19. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.¹⁰ The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.
20. The County Assessor stated that the Assessed Value of the Subject Property had been determined using the cost approach. The Appraiser for the County stated the valuation of the fireplace to be \$3,258. His new opinion of valuation for the dwelling for 2015 was \$236,742. The Commission gives great weight to this opinion of value.¹¹
21. The Taxpayer was further concerned that the sales prices for properties in the market and the assessed values were not identical.
22. The County Assessor explained that if she were to set the assessed values of sold properties at their sales prices, then she would violate Nebraska law by sales chasing.
23. Sales chasing is the practice of using the sale of a property to trigger a reappraisal of that property at or near the selling price.¹² This practice is considered unprofessional because it creates inequities between properties and, unless adjusted for, renders sales studies invalid.¹³
24. The Commission finds the 2015 valuation to be \$583,362. (LV \$250,580, dwelling value \$236,742, outbuildings \$96,040 = \$583,362)
25. 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.
26. The Taxpayer has adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be vacated.

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2015 is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$250,580
<u>Improvements</u>	<u>\$332,782</u>
Total	\$583,362

¹⁰ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹¹ *Id.*

¹² *IAAO Glossary for Property Appraisal and Assessment* at 149 (2nd ed. 2013).

¹³ *County of Douglas v. Neb. Tax Equalization & Review Comm'n*, 262 Neb. 578, 591, 635 N.W.2d 413, 423 (2001).

3. This Decision and Order, if no further action is taken, shall be certified to the Gage County Treasurer and the Gage 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 March 22, 2016.

Signed and Sealed: March 22, 2016

Nancy J. Salmon, Commissioner