

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Steven R. Baumli,
Appellant,

v.

Saline County Board of Equalization,
Appellee.

Case No: 15R 0134

Decision and Order Reversing Saline
County Board of Equalization

BACKGROUND

1. The Subject Property is a residential parcel improved with a one story dwelling and detached garage, with a legal description of: Lots 29-30, blk 108, Crete City, Crete, Saline County, Nebraska.
2. The Saline County Assessor (the County Assessor) assessed the Subject Property at \$64,834 for tax year 2015.
3. The Taxpayer protested this value to the Saline County Board of Equalization (the County Board) and requested an assessed value of \$30,380 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$62,815 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 1, 2016, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Salmon.
7. Steven R. Baumli was present at the hearing on behalf of himself (Taxpayer).
8. Brandi Kelly, Saline 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. If taxable values are to be equalized, it is necessary for a Taxpayer to establish by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment.⁹ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.¹⁰
17. The Taxpayer asserted the Subject Property was overvalued. He provided the Commission with three sales of alleged comparable properties. He asserted that the property located at 1551 Kingwood Ave was across the Street and the most comparable to the Subject Property.
18. According to Nebraska Statute §77-1371, “[c]omparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value.” Further, generally accepted mass appraisal techniques require that after selecting comparable sales, the assessor must “[l]ook for differences between the comparable sale properties

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 *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹⁰ *Id.* at 673, 94 N.W.2d at 50.

and the subject property using the elements of comparison. Then adjust the price of each sale to reflect how it differs from the subject property or eliminate that property as a comparable.”¹¹

19. Without quantified adjustments to the comparable property for all of the different physical characteristics, the Taxpayer’s assertions based upon the comparison of the alleged comparable property and the subject property are given little weight.
20. The Taxpayer asserted that there was no utility building on the property or concrete drive. He purchased the property in 2009 and stated the utility building wasn’t there at the time of purchase. He asserted that the drive to the garage is crushed rock.
21. The County Assessor valued the subject property using the cost approach. The Appraiser for the Saline County Assessor’s office stated that the county used a market-derived depreciation for the Subject Property.
22. The cost approach includes six steps: “(1) Estimate the land (site) value as if vacant and available for development to its highest and best use; (2) Estimate the total cost new of the improvements as of the appraisal date, including direct costs, indirect costs, and entrepreneurial profit from market analysis; (3) Estimate the total amount of accrued depreciation attributable to physical deterioration, functional obsolescence, and external (economic) obsolescence; (4) Subtract the total amount of accrued depreciation from the total cost new of the primary improvements to arrive at the depreciated cost of improvements; (5) Estimate the total cost new of any accessory improvements and site improvements, then estimate and deduct all accrued depreciation from the total cost new of these improvements; (6) Add site value to the depreciated cost of the primary improvements, accessory improvements, and site improvements, to arrive at a value indication by the cost approach.”¹²
23. The Commission removes the concrete drive and utility building and finds the taxable valuation for the Subject Property to be \$61,974. (Utility bldg. = 280, Conc. Drive (900 minus 339 Dep.) = 561) (62,815 –280 - 561 = 61,974.)
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 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:

¹¹ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute, 2008 at 301-02.

¹² International Association of Assessing Officers, *Property Assessment Valuation*, at 230 (3rd ed. 2010).

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	\$ 6,440
<u>Improvements</u>	<u>\$55,534</u>
Total	\$61,974

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

Signed and Sealed: March 3, 2016

Nancy J. Salmon, Commissioner