

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Joseph C. Janousek,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 15R 0191

Decision and Order Reversing the
County Board of Equalization

Background

1. The Subject Property is a 2,910 sq. ft. two story home, with a legal description of: Lot 25 Southwind, Sarpy County, Nebraska
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$315,509 for tax year 2015.
3. The Taxpayer protested this value to the Sarpy County Board of Equalization (the County Board) and requested an assessed value of \$290,000 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$313,751 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 September 19, 2016, at the Omaha State Office Building, 1313 Farnam, Room G, Omaha , Nebraska, before Commissioner Steven A. Keetle.
7. Joseph C. Janousek was present at the hearing (Taxpayer).
8. Jacqueline D. Morehead and Sheila Carnes of the Sarpy County Assessor’s Office were 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 alleged that the assessed value of the home on the Subject Property was excessive when compared to similar properties in the same subdivision.
17. The Taxpayer and the County presented the property record files for several properties located in the Subject Property’s subdivision.
18. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
19. A review of the property record cards for properties in the Subject Property’s subdivision indicate that differences in assessed values of the homes are accounted for in differences in physical characteristics (i.e. quality, condition, age, square footage, etc).
20. The Taxpayer alleged that the value of the Subject Property should be lower because it adjoined a neighborhood which contained smaller cheaper houses than the Subject Property’s neighborhood.
21. The County provided a list of the assessment to sales ratios for all sold properties in the Taxpayer’s subdivision with the ratios for properties located next to an older subdivision pulled out. These sales indicate that adjoining an older subdivision does not have a quantifiable impact on the sales prices of these 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(9) (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, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

22. The Taxpayer did not offer any other information to quantify the impact of the Subject Property's location adjoining an older neighborhood on its value.
23. The Taxpayer alleged that the quality and condition ratings the county utilized for the Subject Property were higher than they should be.
24. The County indicated that it had requested to inspect the interior of the Subject Property to determine if the quality and condition ratings were accurate but that it had not been allowed to perform an interior inspection.
25. The Taxpayer provided pictures of portions of the interior of the Subject Property but indicated that the conditions pictured were not present as of the assessment date but had appeared in the 2016 tax year.
26. The Taxpayer did not present sufficient evidence for the Commission to determine that the quality or condition ratings for the Subject Property determined by the County were incorrect.
27. The Taxpayer alleged that the value of the Subject Property should be reduced due to a drainage easement which runs through the back of the Subject Property and related water problems.
28. The Taxpayer indicated that a friend had indicated that drainage tiles and sump pumps would need to be installed on the Subject Property due to the drainage on the property but that he had not gotten estimates for the cost of this work to quantify the impact of this work on the value of the Subject Property.
29. The information presented indicates that the Subject Property and the property at lot 24 next to the Subject Property are both walk out lots, are both approximately the same size and both have a drainage easement across the back of the lots however the land value of the Subject Property is assessed at \$39,000 and the land value of lot 24 is \$36,000.
30. The Commission finds that the assessed value of the land component of the Subject Property should be \$36,000.
31. 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.
32. 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	\$ 36,000
<u>Improvements</u>	<u>\$274,751</u>
Total	\$310,751

3. This Decision and Order, if no further action is taken, shall be certified to the Sarpy County Treasurer and the Sarpy 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 November 4, 2016.

Signed and Sealed: November 4, 2016

Steven A. Keetle, Commissioner