

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Gregory D. Penning,  
Appellant,

v.

Sarpy County Board of Equalization,  
Appellee.

Case No: 15R 0137

Decision and Order Affirming the  
County Board of Equalization

**Background**

1. The Subject Property is a 1,800 sq. ft. one story modular home, with a legal description of: E 80' Lots 1 & 2 Block 26 Beadles Addition, Papillion, Sarpy County, Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$152,690 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 \$144,560 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$152,690 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 July 27, 2016, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Greg Penning was present at the hearing (the Taxpayer).
8. Jackie Morhead 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.<sup>1</sup>
10. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
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

<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</sup> 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.”<sup>3</sup> 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.”<sup>4</sup>

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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer alleged that the assessed value of the Subject Property was not uniform and proportionate when compared to the assessed values of other houses in the area.
17. The Subject Property is the only modular home in the Taxpayer’s neighborhood, and is one of the newest homes in the neighborhood.
18. The County indicated that modular homes are valued using a different mass assessment model than other types of homes in Sarpy county.
19. The County presented the property record cards of modular homes that indicate that the Replacement Cost New (RCN) of new model homes are determined the same way for modular homes in the county, including the Subject Property.
20. The County stated that they utilized sales of properties in the Subject Property’s neighborhood to determine market adjustments to make to properties in the Subject Property’s neighborhood based on age, quality, condition, economic factors, etc.
21. The County presented the property record files for several properties located in the Subject Property’s neighborhood, as well as a listing of all of the sales and all of the assessed values for properties in the Subject Property’s neighborhood.

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<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

22. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.
23. A review of the list of properties in the Subject Property's neighborhood indicate that differences in assessed values may be accounted for in differences in physical characteristics (i.e. age, quality, condition, square footage, garages, etc).
24. The Taxpayer requested an assessed value of \$127,000, based on the assessed valuations for homes in the Subject Property's neighborhood.
25. The Taxpayer did not provide any property record files for the Commission to use to determine if the properties the Taxpayer relied on when determining his requested value were comparable properties.
26. The limited information presented would indicate that there is a great variety in the characteristics of properties in the Subject Property's neighborhood which would make a determination of comparability an important factor when analyzing the Taxpayer's allegations.
27. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes. The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods. The comparison of assessed values of dissimilar parcels is not recognized as an appropriate approach.
28. 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.
29. The Taxpayer has not 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 affirmed.

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 Affirmed.
2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$ 17,500
<u>Improvements</u>	<u>\$135,130</u>
Total	\$152,690

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 October 20, 2016.

Signed and Sealed: October 20, 2016

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Steven A. Keetle, Commissioner