

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

Adam J. Petr,  
Appellant,

v.

Clay County Board of Equalization,  
Appellee.

Case No: 15R 0192

Decision and Order Reversing  
County Board of Equalization

Background

1. The Subject Property is a one story ranch residence, legally described as Lots 1 and 2, Block 4, Dickson’s Second Addition to Clay Center, Clay County, Nebraska.
2. The Clay County Assessor (the County Assessor) assessed the Subject Property at \$167,780 for tax year 2015.
3. The Taxpayer protested this value to the Clay County Board of Equalization (the County Board) and requested an assessed value of \$145,000 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$167,780 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 21, 2016, at the Hamilton County Courthouse, Aurora, Nebraska, before Commissioner Nancy J. Salmon.
7. Adam J. Petr was present at the hearing as the appealing Taxpayer.
8. Ted S. Griess, Clay County Attorney, was present for the County Board. Also present was Clay County Assessor, Linda Whiting.

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 acquired the Subject Property in May, 2014, at a purchase price of \$140,000. Although the evidence indicated that the selling party desired to move out of state, there is no evidence to indicate that the sale was anything but an arms-length transaction. In 2013, Clay County properties were re-assessed, and the property was assessed at \$137,865. In 2014, the Subject Property was again re-assessed and the valuation was increased by \$29,915 to \$167,780. The Taxpayer asserted that this increase was not justified, and that the Subject Property is substantially overvalued.
17. The Taxpayer provided a written appraisal from a certified real estate appraiser from Hastings, Nebraska (Peg Oswald). While the appraisal was prepared for loan purposes and utilizes comparable properties from outside Clay County, it appears to be supportive of the actual value of the Subject Property. The appraiser noted that because of the small size of Clay Center and lack of meaningful comparable sales, she was required to research sales in nearby small communities in order to appropriately value the Subject Property.
18. The Assessor stated that the Subject Property was re-assessed for 2013 due to new costing and new depreciation. When questioned regarding the additional increase in

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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.).

valuation for 2014, she stated that the increase was due to a new addition to the Subject Property and updates. However, the Commission notes that the new addition was actually constructed in 1995, and the Taxpayer stated there had only been minimal updates to the Subject Property. The Assessor did not quantify the basis for the 2014 increase in any appreciable way. The Assessor also questioned the comparables utilized in the Taxpayer's appraisal, although it does not appear that the sales generated in a two-year period were acceptable for appraisal purposes. The Assessor also indicated that she has not performed an interior inspection of the Subject Property.

19. The Taxpayer (and appraisal) indicated that there was a discrepancy in the finished square footage of the basement area. It appears that the unfinished furnace and storage area constitutes approximately 130 square feet.
20. Upon consideration of the submitted evidence, the Commission finds that the Taxpayer has presented competent evidence that the 2014 increase in valuation was not reasonable. The Commission finds that the best evidence of valuation of the Subject Property was the submitted appraisal concluding that the value was \$152,000.
21. 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.
22. 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	\$ 3,700
<u>Improvements</u>	<u>\$148,300</u>
Total	\$152,000

3. This Decision and Order, if no further action is taken, shall be certified to the Clay County Treasurer and the Clay 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 September 23, 2016

Signed and Sealed: September 23, 2016.

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Nancy J. Salmon, Commissioner