

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

James M. Ochsner,
Appellant,

v.
Keith County Board of Equalization,
Appellee.

Case No: 16R 0002

Decision and Order Reversing Keith
County Board of Equalization

Background

1. The Subject Property is a residential parcel improved with two dwellings which are rented out by the Taxpayers. The Subject Property has a legal description of: Lot 3, Blk 5, Searle's 2nd Add, Ogallala, Keith County, Nebraska.
2. The Keith County Assessor (the County Assessor) assessed the Subject Property at \$37,040 for tax year 2016.
3. The Taxpayer protested this value to the Keith County Board of Equalization (the County Board) and requested an assessed value of \$18,695 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$37,040 for tax year 2016.
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 May 31, 2017, at the Hampton Inn, North Platte, Nebraska, before Commissioner Nancy J Salmon.
7. Taxpayer James M. Ochsner was present at the hearing on behalf of both Taxpayers.
8. Randy Fair, Keith County Attorney 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) (2016 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 indicated that he felt the Subject Property was significantly overvalued. He was primarily concerned about three issues. The first complaint of the Taxpayer concerned the contention of the County that the Subject Property contained an area that had been assessed as a patio. This portion of the Subject Property contains a group of recessed concrete tiles in the back yard.
17. The Commission’s review of the evidence submitted by the parties leads the Commission to conclude that the area referred to in the preceding paragraph has been properly classified by the County as a patio.
18. Secondly, the Taxpayer indicated that the condition of the two rental homes on the Subject Property was extremely poor and not indicative of the 2016 assessed value. The evidence submitted by the County indicated that the statutorily required six year review of residential properties in Keith County was performed in 2016. New costing, depreciation, and land tables were adopted. A determination of actual value may be made by mass appraisal and assessment purposes by using approaches identified in Nebraska statutes. See *Neb. Rev. Stat. § 77-112* (Reissue 2009). The approaches identified are the sales comparison approach, the income approach, the cost approach and

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)* (2016 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)* (2016 Cum. Supp.).

other professionally accepted mass appraisal methods. For valuation purposes, the city of Ogallala was divided into four neighborhoods. In determining the tax valuation the subject property, the County Assessor utilized the cost approach. This approach appears to be the proper approach under the circumstances. In any case, the statute does not require use of all approaches. Actual value may be determined using any one of the accepted approaches.

19. The County Assessor, in order to accurately describe the critical characteristics of a property should inspect the subject property. The Nebraska Supreme Court has supported this conclusion.⁹ Where the Taxpayer refuses to allow the County to inspect the subject property, after challenging the assessed value as determined by the County, there is a presumption that the results of the inspection would militate against the Taxpayer's interest. The finder of fact is the sole judge of what probative fore to give the fact that the Taxpayer refused the County's request to inspect the property.¹⁰ While there is some dispute as to whether or not the Taxpayers actually denied an inspection, the Commissioner finds sufficient evidence to utilize this principle.
20. As noted above, the Taxpayer did provide some information regarding attributes of the area surrounding the Subject Property. However, no evidence was submitted regarding how any of such information could be quantified to establish a lower assessed value of the Subject Property. Based upon the foregoing, the Commission finds that the Taxpayers did not provide sufficient information for the Commission to grant the relief requested. The Commission has reviewed the property record cards as to the Subject Property as well as the property record cards for other properties in the area. The Commission concludes that the Subject Property land and building values are equalized with the comparable properties provided.
21. Finally, the Taxpayer questions the determination by the County as to the square footage of the front of the dwelling located at 508 West 9th Street, Ogallala. The Property Record Card for the Subject Property indicates a square footage of 1,092 for the residence. However, the Taxpayer provided information that the front 234 square feet of the property was actually a solid wall porch with no heat. The porch does have hot water access as it houses a washer and dryer. The County did not contest this contention. After reviewing the property record card, the Commission finds that this portion of the property should be categorized as an enclosed porch. The Commission has re-calculated the information contained in the Property Record Card as follows: The square footge of the residence is reduced to 858 square feet , thus reducing the Reconstruction Cost New (RCN) to \$66,194. The RCN of the enclosed porch is \$8,332 (234 square feet x \$35.61). Therefore, the total RCN is \$77,001. After applying the 79% depreciation amount, the adjusted RCN is \$16,170 (\$66,194 plus \$2,475 plus \$8332 minus 79% depreciation).

⁹ *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 144 N.W.2d 161 (1966).

¹⁰ *Yarpe v. Lawless Distrib. Co.*, 7 Neb. App. 957, 587 N.W.2d 417 (1998).

22. With respect to the enclosed porch described in paragraph 23 above, 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.
23. 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 reversed.

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 2016, is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$ 7,500
<u>Improvements</u>	<u>\$27,500</u>
Total	\$35,000

3. This Decision and Order, if no further action is taken, shall be certified to the Keith County Treasurer and the Keith County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 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 2016.
7. This Decision and Order is effective on June 12, 2017.

Signed and Sealed: June 12, 2017

Nancy J Salmon, Commissioner