

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Paul D. Eurek,
Appellant,

v.

Sherman County Board of Equalization,
Appellee.

Case No: 16R 0181

Decision and Order Affirming the
Determination of the Sherman County
Board of Equalization

For the Appellant:

Paul D. Eurek,
Pro Se

For the Appellee:

Andrew W. Hoffmeister
Deputy Sherman County Attorney

This appeal was heard before Commissioners Robert W. Hotz and James D. Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located at 361 S. 12th Street, Loup City, Sherman County, Nebraska. The parcel is improved with a 3,658 square foot home. The legal description of the parcel is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 2.

II. PROCEDURAL HISTORY

The Sherman County Assessor determined that the assessed value of the Subject Property was \$207,480 for tax year 2016. Paul D. Eurek (the Taxpayer) protested this assessment to the Sherman County Board of Equalization (the County Board) and requested an assessed valuation of \$183,450. The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$207,480.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). On June 19, 2017, Commissioner Steven A. Keetle conducted a single commissioner hearing and, on October 18, 2017, issued an order affirming the

¹ Exhibit 1.

determination of the County Board. On November 15, 2017, the Taxpayer filed a request for rehearing. Pursuant to Neb. Rev. Stat. §77-5005(4), the Commission vacated the single Commissioner’s order and held a rehearing before a panel of the Commission on May 17, 2018, with Commissioner Hotz presiding. Prior to the hearing, the parties exchanged exhibits as ordered by the Commission. In the course of the hearing, Exhibits 1 through 25 were admitted, with the exception of certain portions of Exhibit 21 at pages 1 and 5, as described on the record.

III. STANDARD OF REVIEW

The Commission’s review of the determination by a County Board of Equalization is de novo.² When the Commission considers an appeal of a decision of a County Board of Equalization, a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon 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

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 Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

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 The County Board need not

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).

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. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.⁸

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based [and] may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”⁹ The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”¹⁰ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹¹

IV. VALUATION

A. Law

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹²

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”¹³ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁴ Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.¹⁵ All real property in Nebraska subject to taxation shall be assessed as of

⁸ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

⁹ Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

¹⁰ Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

¹¹ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

¹² Neb. Rev. Stat. §77-112 (Reissue 2009).

¹³ *Id.*

¹⁴ *Omaha Country Club* at 180, 829.

¹⁵ Neb. Rev. Stat. §77-131 (Reissue 2009).

January 1.¹⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷

B. Summary of the Evidence

At the hearing before the Commission, the Taxpayer alleged that the County Board's valuation of the Subject Property was incorrect in at least two respects. The Taxpayer asserted that the effective age used by the County was incorrect and that the County erred in not classifying a portion of the living area as "basement."

1. Effective Age vs. Actual Age

The original residence on the Subject Property was built in 1904, giving it an actual age of 112 years for tax year 2016. In 1998, there was a substantial addition and remodel done to the entire property. The original house was 744 square feet; the addition in 1998 added 2,842 square feet to the original home. The County Assessor used an effective age of 21 years for purposes of calculating depreciation to the entire residence in the 2016 valuation. The effective age was calculated by the County Assessor using a formula that is applied across Sherman County.

Actual age is the number of years that have elapsed since construction of an improvement was completed.¹⁸ Effective age is defined as the age of property based on the amount of observed deterioration and obsolescence it has sustained, which may be different from its chronological age.¹⁹

The Taxpayer alleged that the effective age used for depreciation was wrong but did not present competent evidence to show that the method used to calculate the effective age by the County Assessor was incorrect or that the County Board did not act upon sufficient competent evidence to justify its action. The Taxpayer also did not prove by clear and convincing evidence that the decision by the County Board was arbitrary or unreasonable.

¹⁶ See Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁷ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹⁸ *The Dictionary of Real Estate Appraisal*, 3, Appraisal Institute, 6th ed. (2015).

¹⁹ *Id.* at 74.

2. Classification of Basement

The second issue argued by the Taxpayer is the classification of certain living area in the house as base area (typically known as gross living area) and not as basement. The Taxpayer offered evidence demonstrating that the room was below grade. The appraisal literature indicates that this area should in fact be considered basement because it is below grade.²⁰ A below grade or basement room typically has less value than comparable above grade gross living area, but merely designating the room as “basement” in a technical sense does not provide the information necessary to determine the value of that room; the actual valuation depends upon a variety of other factors.

In this case, evidence was received that the Subject Property is in a flood plain. As such, the below grade room is arguably susceptible to flooding. There was also evidence that, even though the room was below grade, it was only two or three steps down below the above grade portion of the house. Thus, the room had much more the function and appearance of above grade space, and much less the function and appearance of basement space. As to these specific factors, neither the County Board nor the Taxpayer offered any evidence to quantify these distinctions. Put another way, although the Commission is persuaded that the room in question qualifies as basement under applicable definitions, the Taxpayer has failed to present the information necessary for the Commission to determine whether the County Board’s valuation of the room is incorrect, arbitrary, or unreasonable. Therefore, we cannot find that the Taxpayer has met his burden of proof in showing that the County Board acted arbitrarily or unreasonably in including the basement living area as part of the gross living area when setting the value of the Subject Property.

V. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its

²⁰ “Gross living area” includes the “[t]otal area of finished, above-grade residential space. . . . (Finished basements and attic areas are not generally included in total gross living area).” *The Dictionary of Real Estate Appraisal*, 6th Ed., Appraisal Institute, 2015, p. 105.

determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the appeal of the Taxpayer should be denied and the decision of the County Board should be affirmed.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Sherman County Board of Equalization determining the taxable value of the Subject Property for tax year 2016 is affirmed.²¹
2. The taxable value of the Subject Property for tax year 2016 is \$207,480.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Sherman County Treasurer and the Sherman 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 for purposes of appeal on July 25, 2018.²²

Signed and Sealed: July 25, 2018

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

²¹ Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

²² Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.