

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

ACB Enterprises,
Appellant,

v.

York County Board of Equalization,
Appellee.

Case No: 14C 026

Decision and Order Reversing the
Determination of the York
County Board of Equalization

1. A Single Commissioner hearing was held on February 20, 2015, at Hamilton County Court House, 1111 13th Street Lower Level, Aurora, Ne 68818, before Commissioner Salmon.
2. Alan L. Barth was present at the hearing for ACB Enterprises (the Taxpayer).
3. Ann Charlton, York County Assessor, was present for the York County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is Commercial Parcel improved with a 9-hole golf course, with a legal description of: N ½ SW ¼ Ext Tracts & Hwy 20-10-1, 51.18 acres, York County, Nebraska.

Background

5. The York County Assessor (the Assessor) assessed the Subject Property at \$306,463 for tax year 2014.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$205,000 for tax year 2014.
7. The County Board determined that the taxable value of the Subject Property was \$267,373 for tax year 2014.
8. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

9. The Commission’s review of the determination of the County Board of Equalization is de novo.¹ “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.”²

¹ 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).

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

10. 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 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
11. 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
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. 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
14. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸
15. The Taxpayer purchased the Subject Property in December 2012 for \$325,000. He asserted that the purchase price did not include any personal property.
16. The Taxpayer asserted that the Subject Property was not equalized with the 18-hole golf course located in York, Nebraska. He asserted that the 18-hole golf course had a better Country Club, more holes, and a more desirable location than the Subject Property.
17. The County Assessor asserted that the Subject Property was more marketable than the 18-hole golf course because it was a public 9-hole course located near Interstate 80 while the York County Club limited access to members only and was located further from Interstate 80.
18. The Taxpayer disagreed. He asserted that the club house at the 18-hole golf course included a restaurant while the Subject Property does not, and that the 18-hole golf course’s location drew more young golfers than the Subject Property’s location.
19. The County Assessor admitted that there were two errors made in the assessment of the Subject Property. First, the County Assessor utilized an incorrect area for the improvements; the building listed as 1,584 square feet but has a total area of 1,440 square foot. Second the County Assessor only assessed the Subject Property for 8 greens and not 9.

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(8) (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.).

20. The light commercial utility building was assessed at \$5,505 and with the correction of 1,440 square foot, the correct valuation would be \$4,815. $(1,440 \times \$12.86 \times \$1.04 = \$19,259 \text{ RCN} - \$14,444 \text{ Dep} = \$4,815)$. Adding one more hole would add \$13,500 $(\$30,000 - \$16,500 \text{ Dep} = \$13,500)$. With the corrections the improvement valuation for January 1, 2014 would be \$177,823.
21. A review of the York Country Club indicates that it was assessed at \$16,750 replacement cost new less depreciation per green. The Subject Property was assessed at \$13,500 replacement cost new less depreciation per green. The Commission finds that the Subject Property's improvement value took into consideration the relative quality of the Subject Property's greens as compared to the York Country Club.
22. The Commission finds that there is clear and convincing evidence that the County Board's determination of the taxable value of the Subject Property was arbitrary or unreasonable due to the County Board's reliance on the County Assessor's values which contained errors. The Commission finds that the correct improvement value for the Subject Property is \$177,823.
23. The Taxpayer asserted that the Subject Property's land value should be valued the same as the York Country Club at approximately \$1,515 per acre. The Subject Property was assessed at \$2,830 per acre land value and the County Board reduced the assessed value to \$2,000 per acre. The Taxpayer provided the Commission with the Property Records for the Subject Property and the York Country Club.
24. The County Assessor asserted that the Subject Property and the York Country Club had different locations that affected the actual value of the Subject Property. She asserted that her original land value of \$2,830 per acre was correct.
25. While both the County Assessor and the Taxpayer disagree with the County Board's determination, neither provided sufficient evidence to support a finding that the County Board's determination was unreasonable or arbitrary.
26. The Commission finds that the land value of the Subject Property is \$102,360.
27. The Commission finds that the actual value of the Subject Property is \$280,183 for tax year 2014.
28. There is competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
29. There is sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be reversed.

ORDER

IT IS ORDERED THAT:

1. The decision of the York County Board of Equalization determining the taxable value of the Subject Property for tax year 2014 is Vacated and Reversed.

2. The taxable value of the Subject Property for tax year 2014 is:

Land	\$102,360
<u>Improvements</u>	<u>\$177,823</u>
Total	\$280,183

3. This Decision and Order, if no further action is taken, shall be certified to the York County Treasurer and the York 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 2014.
7. This Decision and Order is effective on March 4, 2015.

Signed and Sealed: March 4, 2015

Nancy J. Salmon, Commissioner