

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Randall G. Penke,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 12A 011

Decision & Order Affirming the Decision of
the Sarpy County Board of Equalization

Procedural Background

1. The Subject Property is a 19.29 acre rural residential property with a 2,509 square foot residence built in 2002, a 2,560 square foot metal pole building, and 16.68 acres of agricultural land and horticultural land devoted to Conservation Reserve Program (CRP) grass. The legal description is found in the Case File.
2. The Sarpy County Assessor (the Assessor) assessed the Subject Property at \$386,490 for tax year 2012.
3. Randall G. Penke protested this value to the Sarpy County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$386,490 for tax year 2012.
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 28, 2014, at a Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Randall G. Penke was present at the hearing.
8. Tim Ederer and Martin Becker, employees of the Assessor, and Dan Pittman, the Assessor, were present for the County Board.

Applicable Law

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

¹ See, Neb. Rev. Stat. §77-5016(8) (2012 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.”² 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.”³

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.⁴
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁵
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.⁶
14. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁷

Findings of Fact and Conclusions of Law

15. The Assessor inspected the Subject Property on April 29, 2011. Based upon the inspection, the Assessor made several changes to the property record file, including increasing the quality rating of the improvement from average plus to good, increasing the gross square footage of the improvement, decreasing the basement square footage, and other changes noted in the Case File.
16. The Taxpayer asserted that the percentage increase in assessed value of the Subject Property from 2011 to 2012 was higher than the same increase for other properties.
17. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁸ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.⁹
18. The Taxpayer asserted that the quality rating on the Subject Property was too high and that an easement negatively impacted the value of the parcel. The Taxpayer did not provide persuasive evidence regarding the quality rating and did not quantify the impact of the easement.

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

³ *Id.*

⁴ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁵ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁶ *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).

⁷ Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

⁸ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

⁹ See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

19. 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.
20. The Taxpayer has not adduced 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 affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Sarpy County Board of Equalization determining the value of the Subject Property for tax year 2012 is Affirmed.
2. The taxable value of the Subject Property for tax year 2012 is:

Land	\$101,041
Improvements	\$270,543
Improvements	<u>\$ 14,906</u>
Total	\$386,490

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 (2012 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this 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 2012.
7. This Decision and Order is effective on July 30, 2014.

Signed and Sealed: July 30, 2014

Robert W. Hotz, Commissioner