

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Donald R. & Janiece L. Novotny,
Appellant,

v.

Stanton County Board of Equalization,
Appellee.

Case No: 13R 002

Decision and Order Affirming Stanton
County Board of Equalization

1. A Single Commissioner hearing was held on August 7, 2014., at Platte County Courthouse 2610 14th Street Columbus, Nebraska, before Commissioner Salmon.
2. Donald R. Novotny (the Taxpayer) was present at the hearing.
3. Cheryl Wolverton, Stanton County Assessor, was present for the Stanton County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is a rural residential parcel improved with a 4,088 square foot 1 ½ story single-family dwelling, with a legal description of: Lots 1&2 Eagle Ridge Subdv, A PUD, First Addition, An Addition to Stanton County in NE 9-23-1, Elkhorn Precinct, 20 acres, Stanton County, Nebraska.

Background

5. The Stanton County Assessor (the Assessor) assessed the Subject Property at \$731,205 for tax year 2013.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$579,492 for tax year 2013.
7. The County Board determined that the taxable value of the Subject Property was \$731,205 for tax year 2013.
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

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).

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

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 Taxpayer asserted that the Subject Property was overvalued for tax year 2013. He provided the Commission with a copy of an appraisal with an effective date of July 11, 2012. The appraiser was not available to answer questions regarding the appraisal. The Commission notes the appraisal was done for financing purposes. Without an explanation of the adjustments, the economic depreciation used by the appraiser, and the intended use of the appraisal, the Commission gives little probative value to the appraisal.
15. The Taxpayer also asserted that the Subject Property was located on a gravel road and that properties located on hard-surface roads and receiving city services for sewer and water would sell for more in the market place. The Taxpayer was unable to quantify the amount of difference in the market value.
16. The Taxpayer noted that the comparable properties used by the appraiser were located on hard-surface roads.
17. The Commission was unable to determine that any adjustments were made to the comparable properties for this feature.

² *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(8) (2012 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).

18. The County Assessor valued the Subject Property using the cost approach. She did not agree with the adjustments in the Taxpayer's appraisal.
19. She provided the Commission with Property Record cards for some recent sales both in Stanton County and Madison County. The Appraiser, Taxpayer, and County all agreed that these markets were similar to the Subject Property's and alleged comparable properties' neighborhoods.
20. The Commission does note that the Appraiser and County do not agree in the number of square feet on the main floor of the dwelling, basement, and finished area of the basement.
21. The Commission finds that there is not clear and convincing evidence whether that the County Assessor's measurements are incorrect.
22. 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 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 Stanton County Board of Equalization determining the taxable value of the Subject Property for tax year 2013, is Affirmed.
2. The taxable value of the Subject Property for tax year 2013 is:

Land	\$ 94,000
<u>Improvements</u>	<u>\$637,205</u>
Total	\$731,205

3. This Decision and Order, if no further action is taken, shall be certified to the Stanton County Treasurer and the Stanton 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 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 2013.

7. This Decision and Order is effective on August 15, 2014

Signed and Sealed: August 15, 2014

Nancy J. Salmon, Commissioner