

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Matthew C Neumann
Appellant,

v.

Sarpy County Board of Equalization
Appellee

Case No: 12R 040

Decision Affirming Sarpy
County Board of Equalization

1. A Single Commissioner hearing was held on June 25, 2014, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Salmon.
2. Matthew C Neumann, the Taxpayer, was present at the hearing.
3. Jackie Moorehead, Chief Deputy County Assessor, and Chad Howser, an appriasser for the Sarpy County Assessor’s Office, were present for the Sarpy County Board of Equalization (the County).
4. The Subject Property (Subject Property) is a residential parcel improved with a ranch 2,078 square foot dwelling, with a legal description of: Lot 129 Cimarron Woods, LaVista, Sarpy County, Nebraska.

Background

5. The Sarpy County Assessor assessed the Subject Property at \$326,055 for tax year 2012.
6. The Taxpayer protested this value to the Sarpy County Board of Equalization and requested an assessed value of \$305,000 for tax year 2012.
7. The Sarpy County Board of Equalization determined that the assessed value of the Subject Property was\$ 326,055 for tax year 2012.
8. The Taxpayer appealed the determination of the County 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 provided the Commission with a spreadsheet of several homes in the Subject Property’s neighborhood along with the property record cards. He alleged that the valuation on the comparable homes had decreased from 2011 valuation to the 2012 valuation while the Subject Property’s assessed valuation increased from 2011 to 2012.
15. 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
16. The County Appraiser provided a document to the Commission addressing the Taxpayer’s concern. It is noted on the document that the County Board adjusted the valuation after appeal for tax years 2009 – 2011 to \$305,000. The document is found at page 54 of the county exhibits and shows the actual noticed value for each year.
17. The Taxpayer alleged that he paid \$300,000 for the Subject Property in April 2009 and had a fee appraisal done for financing purposes at that time. The Commission notes that

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).

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

⁹ *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

the feel appraisal valued the Subject Property at \$305,000. The appraiser was not present to answer questions.

18. The actual value of real property for ad valorem purposes should indicate what a willing buyer would pay a willing seller on the open market for Subject Property on the date of assessment. The date of assessment in the current case is January 1, 2012. The Taxpayer's appraisal was not submitted in its entirety, but it indicates that its purpose was to determine the actual value of the Subject Property for use in a transaction which the Taxpayer asserted occurred in 2009. The actual value of real property may change from year to year based upon several economic factors. Other than the Taxpayer's assertions, there was no evidence in that the Subject Property's actual value did not change from 2009 to 2012. For the forgoing reasons, the Commission gives little weight to the fee appraisal.
19. The County Appraiser explained that the Subject Property was valued using the Cost Approach with physical depreciation determined from similar sales in the market and the economic depreciation derived from sales within the Subject Property's Neighborhood. Upon review of several property cards in the Subject Property's neighborhood, ranch style homes were all given a 13% economic depreciation for January 1, 2012.
20. 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.
21. 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	\$ 41,000
<u>Improvements</u>	<u>\$285,055</u>
Total	\$326,055

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 shall only be applicable to tax year 2012.
7. This order is effective on July 1, 2014.

Signed and Sealed: July 1, 2014.

Nancy J. Salmon, Commissioner