

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Robin R. Jacobs,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 13R 011

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

Procedural Background

1. The Subject Property (Subject Property) is a 1,036 square foot single family residence located at 1217 Fairfax Road, Bellevue, Nebraska, with a legal description of: LOT 39 BIRCHCREST.
2. The Assessor assessed the Subject Property at \$122,219 for tax year 2013.
3. The Taxpayer protested this value to the County Board and requested an assessed value of \$115,534 for tax year 2013.
4. The County Board determined that the taxable value of the Subject Property was \$122,219 for tax year 2013.
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 June 18, 2014, at the 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. Robin R. Jacobs (the Taxpayer) was present at the hearing.
8. Jackie Moorehead, Chief Deputy Sarpy County Assessor (the Assessor), and Larry Houlton, an employee of the Assessor, were present for the Sarpy County Board of Equalization (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. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁷ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.⁸ In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the subject property and comparable property is required.⁹ Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.¹⁰
15. If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”¹¹
16. At least two tests exist for determining if property within a taxing district is equalized: (1) does a comparison of the ratio of assessed to actual value indicate that properties are assessed at different levels of value;¹² and (2) are substantially similar properties valued at materially different levels of value.¹³

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 *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

⁸ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

⁹ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

¹⁰ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹¹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹² *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

¹³ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

17. The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁴

Findings of Fact & Conclusions of Law

18. The Assessor valued the Subject Property using a market-adjusted cost approach, deriving any applicable depreciation from a determined market area for the Subject Property.¹⁵ The Assessor used sales from the Subject Property's neighborhood to calculate the depreciation.
19. The Assessor conducted an exterior inspection of the Subject Property in 2012 and upgraded the condition of the Subject Property from average to average-plus based on upgraded siding and windows. The Taxpayer did not dispute the upgraded condition rating. Additionally, the Assessor added a shed which had been previously excluded from the assessment rolls.¹⁶
20. The Taxpayer asserted that the market area constructed by the County Assessor and used to determine applicable depreciation was too broad. The Taxpayer asserted that the applicable area should be limited to the Birchcrest subdivision.
21. The Taxpayer did not provide persuasive evidence to substantiate this assertion.
22. The Taxpayer asserted that the Subject Property was not equalized with other properties in the same taxing district.
23. The Taxpayer did not provide any ratios of the assessed values to actual values for the Subject Property or any of the comparable properties; therefore, the Commission cannot compare these ratios.
24. The Taxpayer provided a table of twelve alleged comparable properties and their assessed values per square foot of area. The Taxpayer's calculation of the area of the alleged comparable properties included finished basement area.
25. The Taxpayer asserted an opinion of value for the Subject Property of \$110,000.
26. To determine if substantially similar properties are valued at materially different levels of value the Commission may review the assessed value per square foot of gross living area of the Subject Property and comparable properties.¹⁷ However, the Commission notes that the Taxpayer's calculations are not based upon the gross living area of the Subject Property or the alleged comparable properties, but instead, they include basement finish square footage as part of gross living area.
27. Gross living area does not include any basement or attic area.¹⁸ Basement finish and finished above-grade living space do not cost the same to construct, and contribute

¹⁴ Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

¹⁵ See, County's Report, pg.1.

¹⁶ See, County's Report, pg.1.

¹⁷ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

¹⁸ See, Appraisal Institute, *The Appraisal of Real Estate*, at 225 (14th ed. 2013).

differently to the actual value of real property. Generally, basement finish is less expensive to install and contributes less to the actual value of real property.¹⁹

28. Additionally, the Taxpayer's alleged comparable properties range in size, style of residence, and number of baths and bedrooms.
29. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.²⁰
30. The Commission finds that the Taxpayer's alleged comparable properties are not truly comparable to the Subject Property.
31. 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.
32. 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 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 \$122,219.
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 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 July 15, 2014.

Signed and Sealed: July 15, 2014

Robert W. Hotz, Commissioner

¹⁹ See, Property Record Cards for the Subject Property and all comparable properties indicating that as recorded in *Marshall and Swift* basement finish is less expensive to install and contributes less to the actual value of real property.

²⁰ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).