

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jeffery J. Woolard
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 13R 027

Decision and Order Reversing
County Board of Equalization

1. A Single Commissioner hearing was held on July 17, 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. Jeffery J. Woolard (the Taxpayer) was present at the hearing.
3. Chad Howser, Appraiser for Sarpy County Assessor’s Office, was present for the Sarpy County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is residential parcel improved with a 1,606 square foot raised ranch single family dwelling, with a legal description of: Lot 611, park View Heights Replat No 3, LaVista, Sarpy County, Nebraska.

Background

5. The Sarpy County Assessor (the Assessor) assessed the Subject Property at \$139,523 for tax year 2013.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$116,250 for tax year 2013.
7. The County Board determined that the taxable value of the Subject Property was \$139,523 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 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) (2012 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 Taxpayer purchased the Subject Property in December 2012 for \$116,250. He asserted that the Subject Property was overvalued by 20%. It was his opinion that Nebraska law should allow the assessed valuation to be set at sale price similar to other states.
15. Nebraska case law regarding the use of sale price as evidence of actual value on appeal of ad valorem taxes is well established. In order to place the appropriate weight on a sale price the conditions surrounding the sale of the Subject Property must be disclosed to ensure that the sale price was arm’s length.⁸ There is a presumption in favor of the County Board that is only overcome by competent evidence.⁹ The sale price of the Subject Property for less than the assessed value alone may not constitute competent evidence to overcome this presumption.¹⁰ However, if the sale price is the result of an arm’s length transaction “it should be given strong consideration.”¹¹
16. Even where the sale price is sufficient to overcome the presumption in favor of the County Board, the sale price alone may not constitute clear and convincing evidence that the County Board’s determination is arbitrary and unreasonable.

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, *Dowd v. Board of Equalization*, 240 Neb. 437, 447, 482 N.W.2d 583, 589 (1992) (quoting *Potts v. Board of Equalization*, 213 Neb. 37, 47-48, 328 N.W.2d 175, 181 (1982)).

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¹⁰ See, *Dowd v. Board of Equalization*, 240 Neb. 437, 447, 482 N.W.2d 583, 589 (1992) (quoting *Potts v. Board of Equalization*, 213 Neb. 37, 47-48, 328 N.W.2d 175, 181 (1982)).

¹¹ See, *Dowd v. Board of Equalization*, 240 Neb. 437, 447, 482 N.W.2d 583, 589 (1992) (quoting *Potts v. Board of Equalization*, 213 Neb. 37, 47-48, 328 N.W.2d 175, 181 (1982)).

17. The Nebraska Supreme Court has held that a sale price does not conclusively determine the actual value of a subject property.¹² Instead the weight to be given to the sale price must be weighed against all other evidence presented in a hearing.¹³ This holding is consistent with Nebraska Court of Appeals decisions which have held that actual value as defined by Nebraska Statute does not mean what the current owner actually paid on the open market for the subject property, but the amount the subject property would ordinarily obtain on the open market.¹⁴
18. The County Board adopted the County Assessor's opinion of value that was formulated based on the cost approach. The cost approach is a statutorily permissible method of determining the actual value of real property for ad valorem tax purposes.¹⁵
19. The Commission finds that based on the totality of the evidence, the sale price of the Subject Property alone is not clear and convincing evidence that the County Board's determination was unreasonable and arbitrary.
20. For completeness, the Taxpayer provided a web shot of a sale two doors down from the Subject Property. The Sale Price was \$86,000 on January 23, 2013. The Taxpayer alleged that this sale supported his opinion that the actual value of the Subject Property and the Subject Property's sale price were the same.
21. The County Appraiser provided the Commission with the Property Record for the alleged comparable property. He stated that the sale was not an arm's length transaction, because it was a sale under duress. The County Assessor indicated that the sale was excluded from the sales roster for that reason.
22. The Commission notes that the alleged comparable property was equalized with the Subject Property by the County Assessor when he assigned assessed values. An Arms' Length Transaction is, "A transaction between unrelated parties under no duress."¹⁶ Non-arm's length transactions should not be used to determine the actual value of real property.¹⁷
23. The Commission gives the comparable sale no weight because it is a non-arm's length transaction, and, therefore, not indicative of the actual value of the Subject Property.
24. The cost approach used by the County Assessor to develop his opinion of value that was adopted by the County Board requires that all the characteristics of the Subject Property and any items of depreciation are appropriately identified and valued.¹⁸
25. The Taxpayer asserted that a home inspection had been performed before his purchase in December 2012. He provided the Commission with a summary of items requiring special attention. The inspector noted there were some broken window seals. He also states that

¹² See, *US Ecology v. Boyd Cty Bd. of Equal.*, 256 Neb. 7, 588 N.W.2d 575 (1999).

¹³ See, *Id.*

¹⁴ See, *Cabela's, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

¹⁵ See, Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁶ Appraisal Institute, *The Dictionary of Real Estate Appraisal*, at 18 (4th ed. 2002).

¹⁷ Appraisal Institute, *The Appraisal of Real Estate*, at 304 (13th ed. 2008).

¹⁸ International Association of Assessing Officers, *Property Assessment Valuation*, at 230 (3rd ed. 2010).

his ability to inspect was limited. The inspector was not present to explain his statements.

26. The inspector noted problems with the roof and suggested the Taxpayer receive an opinion from a qualified contractor. The Taxpayer did replace the roof in 2013 for \$7,710.
27. Additionally, the Taxpayer provided the Commission with a quote to replace the current windows.
28. The inspector listed other items he recommended may need attention, but the Taxpayer did not provide any quantification of the cost to correct these items of deferred maintenance.
29. The Taxpayer additionally asserted that the County Assessor had included the value of a shed that was no longer on the Subject Property when determining the actual value of the Subject Property.
30. The County Appraiser stated that he had completed an interior inspection of the Subject Property on June 17, 2014. He stated that the Subject Property was in average condition for a home built in 1970. He provided the Commission with sales of comparable properties and asserted that his opinion of value would not change for 2013.
31. The County Board agreed that the shed should not be included in the actual value of the Subject Property for tax year 2012.
32. The Commission notes that the County Appraiser's inspection occurred after the replacement of the roof by the Taxpayer. The Commission also notes that the Taxpayer had not replaced any windows as the date of inspection.
33. The Commission finds that there was physical depreciation associated with the old roof as of January 1, 2013, that was not present during the County Appraiser's inspection. This physical depreciation would impact the actual value of the Subject Property. The Commission also finds that the windows were in the same condition on the date of the County Appraiser's inspection and would, therefore, have been considered in the County Appraiser's opinion of value. The Commission finds that the Taxpayer's quote to replace the roof constitutes sufficient quantification of the physical depreciation associated with the old roof.
34. The Commission finds that the actual value of the Subject Property is \$130,786.¹⁹
35. 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.
36. The Taxpayer has 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 Reversed.

¹⁹ (RCN 174,613 – 2485(yard shed)=172,128 – 28% phy dep. 123,932 – 6% Economic Dep =116,496 – 7710 (roof deferred maintenance) = 108,786 improvement value + 22,000 land value = \$130,786.)

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 Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2013 is:

Land	\$ 22,000
<u>Improvements</u>	<u>\$108,786</u>
Total	\$130,786

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 22, 2014.

Signed and Sealed: July 22, 2014

Nancy J. Salmon, Commissioner