

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Crystal J. Hankins,
Appellant,

v.

Cass County Board of Equalization,
Appellee.

Case No: 12R 300

Decision and Order Reversing the
Determination of the Cass
County Board of Equalization

1. A Single Commissioner hearing was held on March 7, 2014, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, NE, before Commissioner Nancy J. Salmon.
2. Crystal J. Hankins (the Taxpayer) was present at the hearing.
3. Janet McCartney, Cass County Commission, was present for the Cass County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is a residential property, with a legal description of: 21-12-13 Osage Ranch, Lot 34 R S1/2 (.39).

Background

5. The Cass County Assessor assessed the Subject Property at \$239,387 for tax year 2012.
6. The Taxpayer protested this value to the Cass County Board of Equalization and requested an assessed value of \$185,600 for tax year 2012.
7. The Cass County Board of Equalization determined that the assessed value of the Subject Property was \$204,914 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 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, an appraiser in the state of Nebraska, asserted that she purchased the Subject Property on March 16, 2012 for \$185,600. She asserted that the purchase price was the result of negotiations with the purchased, and that she originally offered to purchase the property for \$180,000. She stated that the \$180,000 offer was based upon her own opinion of the value of the Subject Property using professional appraisal techniques.
15. She additionally testified that the Subject Property had been on the open market for 243 days before she purchased it.
16. The Taxpayer asserted that the value of the Subject Property was lower than nearby properties in other subdivisions, because the Subject Property’s subdivision was built upon the expectation of commercial growth in the area, including the construction of a Walmart store, but that this development had been discontinued after construction of the properties.
17. The Taxpayer provided the Commission with an opinion of value constructed through a sales comparison approach for the Subject Property which indicated an actual value of \$185,600.
18. Allen Sutcliffe, the Cass County Assessor, was present at the hearing and spoke concerning the valuation of the Subject Property.

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).

19. The County Assessor indicated that he valued the Subject Property using the cost approach and *Marshall and Swift* physical depreciation, and economic depreciation from the market.
20. The County Assessor agreed that the Subject Property's subdivision was experiencing some form of economic obsolescence but that the quantification of the economic obsolescence was difficult due to a lack of sales in the Subject Property's subdivision.
21. The County Assessor did not dispute that the sale of the Subject Property was an arm's length transaction.
22. The Taxpayer's certified that her appraisal was prepared using professionally approved methods. Therefore, under *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. of Equal.*, 285 Neb.120, 825 N.W.2d 447 (2013), the Commission finds that the Taxpayer's appraisal for each Subject Property constitutes sufficient competent evidence to rebut the presumption in favor of the County Board.
23. Where evidence indicates that a sale was part of an arm's length transaction, the sale price should be given strong consideration.⁸ However, the Nebraska Supreme Court has consistently held that sales price is not synonymous with actual value.⁹ Sales price may be taken into consideration, but it is not conclusive of actual value.¹⁰ It is necessary to know the "character and circumstances" of a sale in order to determine that a sale is competent evidence of actual value.¹¹
24. The Commission finds that the economic obsolescence was sufficiently quantified by the Taxpayer's opinion of value and supporting sale of the Subject Property.
25. The Commission also finds that all of the evidence taken together indicates that the County Board's determination was arbitrary or unreasonable.
26. 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.
27. 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 vacated.

⁸ *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 47, 328 N.W.2d 175, 181 (1982).

⁹ *Josten-Wilbert Vault Co. v. Board of Equalization*, 179 Neb. 415, 417, 138 N.W.2d 641, 643 (1965); *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 46, 328 N.W.2d 175, 180 (1982); *Dowd v. Board of Equalization*, 240 Neb. 437, 482 N.W.2d 583 (1992).

¹⁰ See, *Novak v. Board of Equalization*, 145 Neb. 664, 666, 17 N.W.2d 882, 883 (1945); *Collier v. County of Logan*, 169 Neb. 1, 8, 97 N.W.2d 879, 885 (1959); *Josten-Wilbert Vault Co. v. Board of Equalization*. 179 Neb. 415, 417, 138 N.W.2d 641, 643 (1965); *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 46, 328 N.W.2d 175, 180 (1982); *US Ecology, INC., v. Boyd County Board of Equalization*, 256 Neb. 7, 18, 588 N.W.2d 575, 583 (1999); *Cabela's Inc. v. Cheyenne County Bd. Of Equalization*, 8 Neb.App. 582, 591, 597 N.W.2d 623, 632 (1999) (citations omitted).

¹¹ *Josten-Wilbert Vault Co. v. Board of Equalization*. 179 Neb. 415, 417, 138 N.W.2d 641, 643 (1965).

ORDER

IT IS ORDERED THAT:

1. The Decision of the Cass County Board of Equalization determining the value of the Subject Property for tax year 2012 is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2012 is:

Land	\$30,000
<u>Improvements</u>	<u>\$155,600</u>
Total	\$185,600

3. This decision and order, if no further action is taken, shall be certified to the Cass County Treasurer and the Cass 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 March 14, 2014.

Signed and Sealed: March 14, 2014

Nancy J. Salmon, Commissioner