

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Shelley A. Walker-Lesac,
Appellant,

v.

Cass County Board of Equalization,
Appellee.

Case No: 12R 337

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, Nebraska, before Commissioner Salmon.
2. Shelley A. Walker-Lesac and Rudolph E. Lesac (the Taxpayers) were present at the hearing.
3. Janet McCartney, Cass County Commissioner, was present for the Cass County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is a residential parcel improved with a 2,500 square foot single family dwelling, with a legal description of: Pt D B102 P455 Konfrst Add, SE ¼ SW ¼ 14-11-13, Murray, Cass County, Nebraska.

Background

5. The Cass County Assessor assessed the Subject Property at \$167,842 for tax year 2012.
6. The Taxpayer protested this value to the Cass County Board of Equalization and requested an assessed value of \$149,775 for tax year 2012.
7. The Cass County Board of Equalization determined that the assessed value of the Subject Property was \$167,842 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

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).

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

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 Taxpayers asserted that the land valuation on the Subject Property was overvalued and could not rise by 103% from the previous assessment. The improvement valuation was not in dispute at this appeal.
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 Assessor explained that the Subject Property had been valued using the cost approach. He provided the Commission with the fee schedule on Lot values in Murray and explained that the Subject Property’s Land valuation had been established for 2012 using the per square foot method on the fee schedule. It had been valued with a vacant lot contiguous to the Subject Property. At the hearing, the County and Taxpayers stipulated to a value.

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 See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944); *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

17. The County stated that the Subject Property's land valuation was equalized in 2012 with an adjacent lot that had been valued using the same fee schedule. At the hearing the County stated that the Subject Property would best be valued using the fee schedule and a per acre value and not the square foot method. Their opinion of value was \$23,000 for 2012.
18. The Commission gives great weight to the Assessor's opinion of value and finds the 2012 value of the Subject Property to be \$23,000 for the Land and \$138,813 for the improvement value.
19. 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.
20. 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.

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	\$ 23,000
<u>Improvements</u>	<u>\$138,813</u>
Total	\$161,813
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 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 2012.
7. This Decision and Order is effective on March 14, 2014.

Signed and Sealed: March 14, 2014

Nancy J. Salmon, Commissioner