

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Steven J. Mercure & Katherine L. Mercure,
Appellant,

v.

Johnson County Board of Equalization,
Appellee.

Case No: 13R 117

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

Procedural Background

1. A Single Commissioner hearing was held on February 27, 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.
2. William E. Peters, attorney for the the Taxpayer, and Steven J. Mercure (the Taxpayer) were present at the hearing.
3. Rick Smith, Deputy Johnson County Attorney, and Karen Koehler, Johnson County Assessor (the Assessor) were present for the Johnson County Board of Equalization (the County Board).
4. The Subject Property (the Subject Property) is a residential parcel, with a legal description of: Tract 2, Mercure & Pohlman's Addition to Tecumseh, Johnson County, Nebraska 1.24 A in Section 20-5-11.
5. The Assessor assessed the Subject Property at \$289,510 for tax year 2013.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$244,500 for tax year 2013.
7. The County Board determined that the taxable value of the Subject Property was \$289,510 for tax year 2013.
8. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).

Applicable Law

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

Findings of Fact

14. At the hearing, the parties submitted a written stipulation that actual value of the Subject Property was \$275,630 for tax year 2013.⁸

Conclusions of Law

15. 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.⁹
16. 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 and reversed.¹⁰

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 The parties provided the Commission with a stipulation designating an actual value of \$275,630 for tax year 2013 and signed by Karen Koehler, Johnson County Assessor, and William E. Peters, legal counsel for the Taxpayers. Koehler was also present at the hearing and affirmed her opinion that the actual value of the Subject Property for tax year 2013 was \$275,630.

⁹ Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

¹⁰ *Id.*

ORDER

IT IS ORDERED THAT:

1. The Decision of the Johnson County Board of Equalization determining the 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 \$275,630.
3. This Decision and Order, if no further action is taken, shall be certified to the Johnson County Treasurer and the Johnson 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 March 3, 2014.

Signed and Sealed: March 3, 2014

Robert W. Hotz, Commissioner