

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jeffrey & LiQin Kephart,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case Nos: 11R 026, 12R 160 & 14R 135

Decision and Order Reversing the Sarpy
County Board of Equalization in
Case No. 11R 026 & 12R 160

Decision and Order Affirming the Sarpy
County Board of Equalization in
Case No. 14R 135

For the Appellant:

LiQin Kephart,
Pro Se

For the Appellee:

John Reisz,
Deputy Sarpy County Attorney

These appeals were heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located at 10156 Margo Street, in the City of La Vista, Sarpy County, Nebraska. The parcel is improved with a 2,205 square foot home. The legal description of the parcel is found at Exhibit 1. The property record card for the Subject Property is found at Exhibits 4 and 5.

II. PROCEDURAL HISTORY

The Sarpy County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$322,955 for tax year 2011.¹ The Taxpayer protested this assessment to the Sarpy County Board of Equalization (the County Board) and requested a valuation of \$283,283 for tax year 2011.² The County Board determined that the taxable value for tax year 2011 was \$315,000.³

¹ Exhibit 1.

² E4:3

³ Exhibit 1.

The County Assessor determined that the assessed value of the Subject Property for tax year 2012 was \$316,652.⁴ The Taxpayer protested this assessment to the County Board and requested a valuation of \$250,000 for tax year 2012.⁵ The County Board determined that the taxable value for tax year 2012 was \$316,652.⁶

The County Assessor determined that the assessed value of the Subject Property was \$311,281 for tax year 2014.⁷ The Taxpayer protested this assessment to the County Board. The County Board determined that the taxable value for tax year 2014 was \$311,281.⁸

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The Commission held a hearing on July 20, 2015.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.⁹ When the Commission considers an appeal of a decision of a County Board of Equalization, 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."¹⁰

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.¹¹

⁴ Exhibit 2:1.

⁵ E5:3

⁶ Exhibit 2:1.

⁷ Exhibit 3.

⁸ Exhibit 3.

⁹ See, Neb. Rev. Stat. §77-5016(8) (2014 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).

¹⁰ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

¹¹ *Id.*

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.¹² Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.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.¹⁴ The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.¹⁵

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”¹⁶ The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”¹⁷ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁸

IV. VALUATION

A. Law

Under Nebraska law,

[a]ctual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹⁹

¹² Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

¹³ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁴ 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).

¹⁵ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹⁶ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

¹⁷ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

¹⁸ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹⁹ Neb. Rev. Stat. §77-112 (Reissue 2009).

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”²⁰ “Actual value, market value, and fair market value mean exactly the same thing.”²¹ Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.²² All real property in Nebraska subject to taxation shall be assessed as of January 1.²³ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁴

B. Summary of the Evidence

LiQin Kephart testified that the assessment of the Subject Property for all three tax years did not properly take into account the fact that the basement foundation of the home had significantly settled. Kephart offered her testimony and photographs illustrating how the settling had caused cracks in walls and ceilings, and resulted in some windows and doors becoming inoperable.²⁵ The Taxpayer asserted that a potential buyer would be unwilling to pay market value for the Subject Property because of the uncured foundation problems, and she estimated the cost to cure at a minimum of \$50,000, with the possibility of repair costs exceeding \$100,000. As owner of the property, she opined that without the foundation issues the actual value of the Subject Property would be \$315,000.

Kephart testified that she had not obtained an appraisal of the property nor had she obtained an estimate of repair costs from a structural engineer. She asserted that she had obtained an estimate from a foundation repair company she called Thrasher and that the estimate of repairs from that company had been approximately \$28,800. However, Kephart stated her opinion, as a person with education and experience in general engineering, that the Thrasher estimate was insufficient, and that the repairs contemplated in the estimate would have only partially corrected the structural problems. Other than the Thrasher estimate, Kephart did not quantify the effect of the foundation settling on the actual value of the Subject Property.

²⁰ *Id.*

²¹ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

²² Neb. Rev. Stat. §77-131 (Reissue 2009).

²³ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

²⁴ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²⁵ See Exhibit 7:1-14.

The County Assessor used a cost approach to value the Subject Property.²⁶ Based upon an interior inspection conducted October 9, 2012, the County Assessor made recommendations to the County Board for changes lowering the taxable value of the Subject Property for tax years 2011 and 2012.²⁷ For tax year 2011, the Assessor's recommended opinion of value of the Subject Property after inspection was \$301,235.²⁸ For tax year 2012, the Assessor's recommended opinion of value of the Subject Property after inspection was \$295,030.²⁹ At the hearing, the County Board offered these recommended changes as evidence of the actual value of the Subject Property for tax years 2011 and 2012.

No other evidence was offered to quantify the effects of the foundation settling on the actual value of the Subject Property. No other evidence was offered to prove the actual value of the Subject Property for tax years 2011, 2012, or 2014.

V. CONCLUSION

The Commission finds that the changes to valuation recommended by the County Assessor are competent evidence to rebut the presumption in favor of the County Board's determinations of taxable value for tax years 2011 and 2012 and constitute clear and convincing evidence that the determination of taxable value by the County Board for tax years 2011 and 2012 was arbitrary or unreasonable.

The Commission also finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination for tax year 2014. The Commission further finds there is not clear and convincing evidence that the County Board's decision for tax year 2014 was arbitrary or unreasonable.

For all of the reasons set forth above, the decisions of the County Board for tax years 2011 and 2012 should be vacated and reversed, and the decision of the County Board for tax year 2014 should be affirmed.

²⁶ See the cost approach Residential Data Sheets at E4:6-7 (2011) and E5:5-6 (2012).

²⁷ See Exhibit 4:1 and Exhibit 5:1.

²⁸ Exhibit 4:30.

²⁹ Exhibit 5:29.

VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Sarpy County Board of Equalization determining the taxable value of the Subject Property for tax years 2011 and 2012 are vacated and reversed.³⁰
2. The decision of the Sarpy County Board of Equalization determining the taxable value of the Subject Property for tax year 2014 is affirmed.
3. The taxable value of the Subject Property for 2011 is as follows:

Land	\$ 41,000
<u>Improvement</u>	<u>\$260,235</u>
Total	\$301,235

4. The taxable value of the Subject Property for 2012 is as follows:

Land	\$ 41,000
<u>Improvement</u>	<u>\$254,030</u>
Total	\$295,030

5. The taxable value of the Subject Property for 2011 is as follows:

Land	\$ 41,000
<u>Improvement</u>	<u>\$270,281</u>
Total	\$311,281

6. This Decision and Order, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).
7. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
8. Each party is to bear its own costs in this proceeding.

³⁰ Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceedings. 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.

9. This Decision and Order shall only be applicable to tax years 2011, 2012, and 2014.

10. This Decision and Order is effective for purposes of appeal on July 22, 2015.³¹

Signed and Sealed: July 22, 2015

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

³¹ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.