

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jamie M. Cunningham,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 15R 0046

Decision and Order Affirming the
County Board of Equalization

Background

1. The Subject Property is a 840 sq. ft. mobile home, with a legal description of: Imp Only Lot 114 Washington Terrace LLC.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$25,089 for tax year 2015.
3. The Taxpayer protested this value to the Sarpy County Board of Equalization (the County Board) and requested an assessed value of \$15,000 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$25,089 for tax year 2015.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on July 26, 2016, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven A. Keettle.
7. Jamie M. Cunningham was present at the hearing (the Taxpayer).
8. Jackie Morehead and Lesa Ryan from the Sarpy County Assessor's Office were present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission's review of the determination of the County Board of Equalization is de novo.²
11. 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

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

² 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).

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

12. 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
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
14. 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
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The Taxpayer alleged that the Subject Property was overvalued based on the condition of the property.
17. The Taxpayer presented photographs of portions of the Subject Property to demonstrate its condition.
18. The County Board indicated that an interior inspection had been requested but that the county appraiser had not been allowed into the Subject Property.
19. The County Board indicated that without an interior inspection it did not have enough information to change the condition rating of the Subject Property even after viewing the photographs.
20. The Taxpayer alleged that the market for mobile home in the Subject Property’s mobile home park is limited due to the owners of the homes leasing the lots on which they are located.
21. The Taxpayer purchased the Subject Property for \$22,000 in September of 2011.
22. The County relied on 14 sales of mobile homes in the Subject Property’s mobile home park during the two year sales period used for residential properties. One of these sales

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(9) (2014 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 Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

the County relied on was the Taxpayer purchasing an additional mobile home in the Subject Property's mobile home park.

23. The Taxpayer alleged that the number of exempt properties in the mobile home park in which the Subject Property is located had a negative impact on the value of the Subject Property.
24. There is no information as to the actual number of exempt properties in the mobile home park or quantification of any impact on value that these exemptions may have.
25. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
26. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2015, is Affirmed.
2. The taxable value of the Subject Property for tax year 2015 is:

<u>Improvements</u>	\$25,089
Total	\$25,089

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 (2014 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 2015.
7. This Decision and Order is effective on October 19, 2016.

Signed and Sealed: October 19, 2016

Steven A. Keettle, Commissioner