

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Michael J. Palmer,
Appellant,

v.

Cheyenne County Board of Equalization,
Appellee.

Case No: 14R 191

Decision and Order Affirming Cheyenne
County Board of Equalization

1. A Single Commissioner hearing was held on June 9, 2015, at Hampton Inn North Platte, 200 Platte Oasis Parkway, North Platte, Nebraska, before Commissioner Salmon.
2. Michael J. Palmer (the Taxpayer) was present at the hearing.
3. Paul Schaub, Cheyenne County Attorney, was present for the Cheyenne County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is residential parcel improved with a 1,774 square foot single family dwelling, with a legal description of: LotA Replat of Lots 1&2, Block 3, Parkridge Addition, Sidney, Cheyenne County, Nebraska.

Background

5. The Cheyenne County Assessor (the Assessor) assessed the Subject Property at \$220,120 for tax year 2014.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$196,626 for tax year 2014.
7. The County Board determined that the taxable value of the Subject Property was \$215,719 for tax year 2014.
8. The Taxpayer appealed the determination of the County Board 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) (2014 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 Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸
15. The Taxpayer asserted that the Subject Property’s Valuation was increased \$20,306 for from tax year 2013 to tax year 2014. He asserted that none of the other properties in the Subject Properties neighborhood had increased that much. He provided a spreadsheet with the 2013 valuation and 2014 valuation for several properties.
16. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.¹⁰
17. The Taxpayer asserted that the dwelling was built in 2010. He asserted that the assessed value of the dwelling exceeded the cost to build the dwelling. He asserted that after adjusting for inflation the assessed value of the dwelling should be \$180, 648.
18. The Taxpayer also asserted that the Subject Property was next to a Substation He was unable to quantify what effect that would have on the market value of the Subject Property.
19. The County Assessor explained that the Subject Property and all the properties in the neighborhood had been reassessed for 2014. She noted that a new Marshall and Swift

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) (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.).

⁹ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁰ 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).

costing was applied and market depreciation was applied. She stated that when a reappraisal is performed, some properties may increase or decrease in value. The taxpayer asserted that he agreed with the physical characteristics of the Subject Property used for the 2014 assessment.

20. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.¹¹ The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.¹²
21. Actual value of real property may change from year to year dependent upon the circumstances of the real property market.¹³ The Taxpayer has correctly identified that inflation may affect the actual value of real property from year to year, but other factors may also affect the actual value of real property. These other factors may cause an increase in the actual value of real property in excess of inflation or may cause a decrease in actual value despite inflation.
22. The Taxpayer's assertion that the proximity of the Subject Property to a substation would decrease the actual value of the Subject Property is best characterized as an assertion that the Subject Property is impacted by external obsolescence. External obsolescence occurs when something outside of the Subject Property affects the actual value of the Subject Property.¹⁴ External obsolescence is not included in Marshall and Swift costing tables and must be independently calculated.¹⁵
23. External obsolescence is calculable and may be included in determining the application depreciation in the cost approach.¹⁶ However, the external obsolescence must be quantified. The Taxpayer's general assertion may be true, but there was insufficient evidence to quantify the external obsolescence.
24. The County Assessor conducted a professionally accepted mass appraisal cost approach to determine the actual value of the Subject Property. The County Assessor adjusted indexes used as part of that approach for local market factors through depreciation calculations.
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 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 affirmed.

¹¹ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹² *Id.*

¹³ The assessed value for real property may be different from year to year, dependent upon the circumstances. See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁴ See, Marshall & Swift/Boeckh, LLC, *Residential Cost Handbook*, at E-1 (12/2010).

¹⁵ See, Marshall & Swift/Boeckh, LLC, *Residential Cost Handbook*, at E-1 (12/2010).

¹⁶ See, International Association of Assessing Officers, *Property Assessment Valuation*, at 230 (3rd ed. 2010).

ORDER

IT IS ORDERED THAT:

1. The Decision of the Cheyenne County Board of Equalization determining the taxable value of the Subject Property for tax year 2014, is Affirmed.
2. The taxable value of the Subject Property for tax year 2014 is:

| | |
|---------------------|------------------|
| Land | \$ 23,132 |
| <u>Improvements</u> | <u>\$192,587</u> |
| Total | \$215,719 |

3. This Decision and Order, if no further action is taken, shall be certified to the Cheyenne County Treasurer and the Cheyenne 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 2014.
7. This Decision and Order is effective on June 18, 2015.

Signed and Sealed: June 18, 2015

Nancy J. Salmon, Commissioner