

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

James E Koepp,  
Appellant,

v.

Clay County Board of Equalization,  
Appellee.

Case No: 14R 100

Decision and Order Reversing Clay  
County Board of Equalization

1. A Single Commissioner hearing was held on February 20, 2015, at Hamilton Co. Courthouse, 1111 13th Street, Driver License Rm., LL NW Corner, Aurora, before Commissioner Salmon.
2. James E. Koepp (the Taxpayer) was present at the hearing.
3. Ted S. Griess was present for the Clay County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is residential parcel improved with a 1,413 square foot, one story, family dwelling, with a legal description of: Lots 13-16, Blk 2 O.T., Glenvil Village, Clay County, Nebraska.

Background

5. The Clay County Assessor (the Assessor) assessed the Subject Property at \$92,975 for tax year 2014.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$76,800 for tax year 2014.
7. The County Board determined that the taxable value of the Subject Property was \$92,975 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.<sup>1</sup> “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.”<sup>2</sup>

<sup>1</sup> 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).

<sup>2</sup> *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.”<sup>3</sup> 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.”<sup>4</sup>
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.<sup>5</sup>
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
14. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>
15. The Taxpayer asserted that he purchased the Subject Property in December 2013 for \$83,000. He asserted that the purchase price included a Dixon Zero-Turn Riding Lawnmower, which the Taxpayer asserted contributed \$2,000 to the purchase price, and a rebate check from the seller for \$800. The Taxpayer asserted that the purchase price for real property was \$80,200. The Taxpayer opined that the Subject Property’s actual value as of January 1, 2014, was equal to the purchase price of the real property in December 2013 for \$80,200.
16. The Taxpayer further asserted that the Subject Property should only be assessed at 96% of actual value and requested an assessed value for the Subject Property of \$76,992. (\$80,200 x .96 = \$76,992.
17. The Taxpayer asserted that the Subject Property is only one block from the train tracks and only 1 mile from a feed lot to the West of town. He further asserted that the Subject Property has an evacuation system for radon and the presence of radon would negatively affect the Subject Property’s market value. He also asserted that the basement had been flooded three times and that he is currently removing the basement finish and replacing it. He informed the Commission that he had not begun this project until after January 1, 2014.

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<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

18. The Taxpayer asserted he was aware of the deferred maintenance in the home and took it into consideration when negotiating the purchase price in December 2013. The Taxpayer provided the Commission with a property record card for an alleged comparable that sold in April 2013 for \$88,000.
19. The Assessor's property record has the dwelling listed as Average Plus condition. After the Taxpayer explained the items of deferred maintenance on the Subject Property, the County Assessor arrived at a new opinion of the condition of the Subject Property. The County Assessor asserted that the Subject Property has a condition rating of Average minus and that the Subject Property's depreciation should be increased to 48%.
20. Adjusting for the County Assessor's new opinion of condition and depreciation derives an opinion of value for the Subject Property of \$89,684. (Dwelling RCN \$164,680 – \$79,046 (48% Dep) = dwelling RCN less depreciation of \$85,634 + Misc impr \$570 + outbuilding value \$200 + land Value \$3,280 = \$89,684).
21. The Commission finds that 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.
22. The Commission finds that the County Assessor's testimony and all other evidence constitute clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary.
23. Concerning the sale price of the Subject Property, The Nebraska Supreme Court has consistently held that sales price is not synonymous with actual value.<sup>9</sup> Nebraska Statutes permit the county assessor to value the Subject Property using the sales comparison approach, cost approach, income approach, or any commonly accepted mass appraisal technique.<sup>10</sup>
24. In *Cabela's Inc. v. Cheyenne County Bd. Of Equalization*, the Nebraska Court of Appeals held that: "Pursuant to § 77-112, the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade."<sup>11</sup>
25. The common law only requires that the Commission give the purchase price strong consideration.<sup>12</sup> An arm's length transaction is not conclusive of the actual value of the Subject Property.<sup>13</sup> When giving the sale consideration, the Commission may assign weight to the sale based upon the other evidence presented.<sup>14</sup> The mere fact that only a

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<sup>9</sup> *Josten-Wilbert Vault Co. v. Board of Equalization*, 179 Neb. 415, 417, 138 N.W.2d 641, 643 (1965); *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 46, 328 N.W.2d 175, 180 (1982); *Dowd v. Board of Equalization*, 240 Neb. 437, 482 N.W.2d 583 (1992).

<sup>10</sup> Neb. Rev. Stat. § 77-112 (Reissue 2009).

<sup>11</sup> 8 Neb.App. 582, 591, 597 N.W.2d 623, 632 (1999) (citations omitted).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

single sale is presented as evidence of actual value may be given weight by the trier of fact.<sup>15</sup>

26. Given the current statutory scheme, which defines actual value as “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 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[,]”<sup>16</sup> the Commission concurs with the Nebraska Court of Appeals in *Cabela’s Inc.*, “the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.”<sup>17</sup> The Commission finds this interpretation harmonious with current common law and statute.
27. Additional evidence at the hearing supports the County Assessor’s revised opinion of value, including but not limited to, the sale of the Taxpayer’s alleged comparable property.
28. The Commission finds that the actual value of the Subject Property is \$89,684.
29. The decision of the County Board should be vacated.

## ORDER

### IT IS ORDERED THAT:

1. The Decision of the Clay County Board of Equalization determining the taxable value of the Subject Property for tax year 2014, is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2014 is:

Land	\$ 3,280
<u>Improvements</u>	<u>\$86,404</u>
Total	\$89,684

3. This Decision and Order, if no further action is taken, shall be certified to the Clay County Treasurer and the Clay 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.

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<sup>15</sup> *Firethorn Inv. v. Lancaster County Bd. of Equalization*, 261 Neb. 231, 240, 622 N.W.2d 605, 611 (2001)(Citations Omitted) (“Rather, the fact that evidence of other sales is not presented goes to the weight of the evidence.”).

<sup>16</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>17</sup> *Cabela’s Inc. v. Cheyenne County Bd. Of Equalization*, 8 Neb.App. 582, 591, 597 N.W.2d 623, 632 (1999) (citations omitted).

6. This Decision and Order shall only be applicable to tax year 2014.
7. This Decision and Order is effective on March 4, 2015.

Signed and Sealed: March 4, 2015

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Nancy J. Salmon, Commissioner