

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Nicholas R. Niver
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 14R 011

Decision and Order Affirming
County Board of Equalization

1. A Single Commissioner hearing was held on February 10, 2016, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven A. Keetle.
2. Nicholas R. Niver was present at the hearing (Taxpayer).
3. Jackie Morehead and Shane Grow of the Sarpy County Assessor’s Office were present for the Sarpy County Board of Equalization (the County Board).
4. The Subject Property is a 2,303 square foot residential property located at 7216 S. 171st Street, Omaha, Sarpy County, Nebraska, with a legal description of: Lot 111 Harrison Woods (Subject Property).

Background

5. The Sarpy County Assessor (the Assessor) assessed the Subject Property at \$249,380 for tax year 2014.
6. The Taxpayer protested this value to the Sarpy County Board and requested an assessed value of \$216,300 for tax year 2014.
7. The Sarpy County Board determined that the taxable value of the Subject Property was \$249,380 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

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

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).

been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.”³

3. 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.”⁴ 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.”⁵
4. 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.⁶
5. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷
6. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁸
7. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁹
8. The Taxpayer argued that the Subject Property was not assessed at the same level as comparable properties.
9. The Taxpayer brought information regarding the sales of four properties that occurred within approximately a year of the sale of the Subject Property.
10. The Assessor’s office indicated that the four sales that the Taxpayer brought were not comparable to the subject property because they were all classified at a lower quality of construction than the Subject Property.
11. The Assessor’s office indicated that without an interior inspection of the Subject Property they could not determine if the quality of construction of the Subject Property could be changed to that of the four sales that the Taxpayer presented.
12. There was no information presented at the hearing to indicate that the quality of construction of the Subject Property should be changed from the County’s determination.
13. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (quality, condition, size, shape, and topography),

³ *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁴ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁵ *Id.*

⁶ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁸ 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).

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

and location. See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

14. "A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject, its price is brought closer to the subject's unknown value." Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).
15. 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.
16. 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.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Sarpy 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	\$ 28,000
Improvements	<u>\$221,380</u>
Total	\$249,380
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 2014.
7. This Decision and Order is effective on February 22, 2016.

Signed and Sealed: February 22, 2016.

Steven A. Keetle, Commissioner