

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

James J. Laughlin,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 14R 138

Decision and Order Reversing
County Board of Equalization

1. A Single Commissioner hearing was held on February 10, 2016, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven A. Keetle.
2. James J. Laughlin 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 (County Board).
4. The Subject Property is a 1,774 square foot residential property located at 18925 Chandler Road, Omaha, Sarpy County, Nebraska with a legal description of: Lot 29 Sugar Creek Replat 2 (Subject Property).

Background

5. The Sarpy County Assessor (the Assessor) assessed the Subject Property at \$253,884 for tax year 2014.
6. The Taxpayer protested this value to the Sarpy County Board and requested an assessed value of \$245,000 for tax year 2014.
7. The Sarpy County Board determined that the taxable value of the Subject Property was \$253,884 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 assessed value of the Subject Property should be the same as the purchase price he paid for the Subject Property in April of 2014.
9. The Taxpayer purchased the Subject property in April of 2014 for \$250,000.
10. The Sarpy County Assessor’s office indicated that it uses a marked adjusted cost approach to value residential properties.
11. The County utilized the June 2013 cost tables from the Marshall and Swift Valuation Service in their mass appraisal software to generate the replacement cost new for residential properties.
12. The County then utilized sales in Sarpy County to calibrate depreciation tables used to calculate the appropriate depreciation to be applied to each property in Sarpy County.
13. The County utilized 27 sales of ranch style properties to determine the depreciation to be applied to the Subject Property.
14. Shane Grow, from the Sarpy County Assessor’s, office indicated that he inspected the Subject Property in January of 2015 and discovered small errors in the measurement of

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.).

the Subject Property that when changed to the correct measurements would result in an assessed value of the Subject Property of \$253,616 for tax year 2014.

15. Regarding use of the purchase price of a property to determine value the Nebraska Court of Appeals has held “[i]t is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.” *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).
16. Additionally the Court of Appeals has held that “[p]ursuant 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.” *Cabela’s, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).
17. The Parties produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
18. The Parties have 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 vacated.

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 Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2014 is:

Land	\$ 32,000
Improvements	<u>\$221,616</u>
Total	\$253,616

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