

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Shirley L. Armstrong
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 14R 202, 14R 203, 14R 204,
14R 205, & 14R 206

Decision and Order Affirming the Decisions
of the County Board of Equalization in Part
and Reversing in Part

1. A Single Commissioner hearing was held on February 11, 2016, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven A. Keetle.
2. Shirley L. Armstrong and Larry Armstrong were 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 Properties are five vacant or minimally improved lots located in the Good Luck Addition to the to the City of Bellevue, Sarpy County Nebraska, whose legal descriptions may be found in the Case Files (Subject Property or Subject Properties).

Background

5. The Sarpy County Assessor (the Assessor) assessed the Subject Property in Case No. 14R-202 at \$9,000 for tax year 2014.
6. The Taxpayer protested this value to the Sarpy County Board and requested a lower assessed value for tax year 2014.
7. The Sarpy County Board determined that the taxable value of the Subject Property in Case No. 14R-202 was \$7,500 for tax year 2014.
8. The Sarpy County Assessor (the Assessor) assessed the Subject Property in Case No. 14R-203 at \$9,000 for tax year 2014.
9. The Taxpayer protested this value to the Sarpy County Board and requested a lower assessed value for tax year 2014.
10. The Sarpy County Board determined that the taxable value of the Subject Property in Case No. 14R-203 was \$7,500 for tax year 2014.
11. The Sarpy County Assessor (the Assessor) assessed the Subject Property in Case No. 14R-204 at \$9,480 for tax year 2014.
12. The Taxpayer protested this value to the Sarpy County Board and requested a lower assessed value for tax year 2014.
13. The Sarpy County Board determined that the taxable value of the Subject Property in Case No. 14R-204 was \$7,980 for tax year 2014.

14. The Sarpy County Assessor (the Assessor) assessed the Subject Property in Case No. 14R-205 at \$9,000 for tax year 2014.
15. The Taxpayer protested this value to the Sarpy County Board and requested a lower assessed value for tax year 2014.
16. The Sarpy County Board determined that the taxable value of the Subject Property in Case No. 14R-205 was \$7,500 for tax year 2014.
17. The Sarpy County Assessor (the Assessor) assessed the Subject Property in Case No. 14R-206 at \$10,570 for tax year 2014.
18. The Taxpayer protested this value to the Sarpy County Board and requested a lower assessed value for tax year 2014.
19. The Sarpy County Board determined that the taxable value of the Subject Property in Case No. 14R-202 was \$9,070 for tax year 2014.
20. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

21. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
22. 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 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
23. 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

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).

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.*

24. 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
25. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷
26. 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
27. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁹
28. The Taxpayer argued that the value of the Subject Properties should be reduced because they lacked utilities.
29. The Taxpayer did not offer evidence of the actual cost to supply the Subject Properties with utilities or of the impact of the lack of utilities had on the value of the Subject Properties.
30. The Taxpayer argued that the total assessed value of the five contiguous lots that make up the Subject Properties should be lower than the assessed value of surrounding lots.
31. The Taxpayer presented information about eight properties located on the same block as the Subject Properties.
32. The information presented showed that the Subject Properties had a lower per lot assessment than any of the other eight properties presented by the Taxpayer.
33. The Subject Properties are each individual parcels consisting of a single lot that each have their own legal description and have not been combined into parcels with any other lots.
34. Several of the eight properties presented by the Taxpayer consisted of multiple lots that had been combined into a single parcel with a single legal description.
35. The Assessor's office indicated that they used the same methodology to determine assessed values for all parcels in the Good Luck Subdivision.
36. The Assessor's office indicated that the per parcel assessment of each of the Subject Properties was lower than any of the other eight parcels presented by the Taxpayer due to the size of the lots and a proximity discount applied to the Subject Properties because the Taxpayer owned other parcels adjacent to the Subject Properties.
37. The Assessor's office indicated that because the Subject Properties were each individual parcels with individual legal descriptions the County could not assess them as a single parcel.

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.).

38. Shane Grow, from the Sarpy County Assessor's, office indicated that he inspected the Subject Properties in January of 2016 and determined that the shed located on the Subject Property in Case No. 14R-206 had no value and determined that removing this improvement value would result in an assessed value of the Subject Property in Case No. 14R-206 of \$7,500 for tax year 2014.
39. 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 in Case Nos 14R-202, 14R-203, 14R-204 or 14R-205.
40. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary in Case Nos 14R-202, 14R-203, 14R-204 or 14R-205.and the decisions of the County Board should be affirmed.
41. The 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 in Case No 14R-206.
42. The Taxpayer has adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board in Case No. 14R-206 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 in Case Nos. 14R-202, 14R-203, 14R-204 and 14R-205 for tax year 2014, are Affirmed.

2. The taxable value of the Subject Property in Case No. 14R-202 for tax year 2014 is:

Land	<u>\$7,500</u>
Total	\$7,500

3. The taxable value of the Subject Property in Case No. 14R-203 for tax year 2014 is:

Land	<u>\$7,500</u>
Total	\$7,500

4. The taxable value of the Subject Property in Case No. 14R-204 for tax year 2014 is:

Land	\$7,500
Improvements	<u>\$ 480</u>
Total	\$7,980

5. The taxable value of the Subject Property in Case No. 14R-205 for tax year 2014 is:

Land	<u>\$7,500</u>
Total	\$7,500

6. The Decision of the Sarpy County Board of Equalization determining the taxable value of the Subject Property in Case No. 14R-206 for tax year 2014 is Vacated and Reversed.

7. The taxable value of the Subject Property in Case No. 14R-206 for tax year 2014 is:

Land	\$7,500
Improvements	<u>\$ 0</u>
Total	\$7,500

8. 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.).

9. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.

10. Each Party is to bear its own costs in this proceeding.

11. This Decision and Order shall only be applicable to tax year 2014.

12. This Decision and Order is effective on February 22, 2016.

Signed and Sealed: February 22, 2016

Steven A. Keetle, Commissioner