

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

George J. Brtek
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 14R 300

Decision and Order Affirming
County Board of Equalization

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. George J. Brtek and Elizabeth Brtek 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 Property is a 1,312 square foot residential ranch property located at 10406 Lewis and Clark Rd, Bellevue, Sarpy County, Nebraska, with a legal description of: Lot 59 Brookside (Subject Property).

Background

5. The Sarpy County Assessor (the Assessor) assessed the Subject Property at \$160,918 for tax year 2014.
6. The Taxpayer protested this value to the Sarpy County Board and requested an assessed value of \$157,788 for tax year 2014.
7. The Sarpy County Board determined that the taxable value of the Subject Property was \$160,918 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. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. 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

11. 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
12. 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
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷
14. 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
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁹
16. The Taxpayer argued that the assessed value of the Subject Property was one of only two ranch villas in the Brookside subdivision whose assessed value increased from the prior year.
17. The Assessor’s office indicated that the assessed values for ranch villas in the Brookside subdivision did generally decrease for tax year 2014. The Assessor’s office indicated however, that the assessed value of one ranch villa in Brookside increased due to the addition of three plumbing fixtures for tax year 2014 and the assessed value of the Subject Property increased for tax year 2014 because it’s 2013 assessed value had been reduced by the Sarpy County Board of Equalization for tax year 2013.
18. The Nebraska Supreme Court has held that the assessed value for real property may be different from year to year, dependent upon the circumstances.¹⁰ For this reason, a prior year’s assessment is, on its own, not relevant to the subsequent year’s valuation.¹¹

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.).

¹⁰ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹¹ 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).

19. The Taxpayer argued that the Subject Property was not being assessed proportionally with other like properties in the Brookside Subdivision.
20. The Taxpayers offered pictures of the stool and sink added to the subject property and asserted that these should only increase the assessed value by \$200 based on conversations the Taxpayer had with an appraiser.
21. The County indicated that all of the properties in the Brookside Subdivision were assessed using a marked adjusted cost approach to value residential properties.
22. 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, including the cost for plumbing fixtures.
23. 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.
24. The County utilized 53 sales to determine the depreciation to be applied to the Subject Property and other properties in the Brookside Subdivision.
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.

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>\$132,918</u>
Total	\$160,918
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 23, 2016.

Signed and Sealed: February 23, 2016.

Steven A. Keetle, Commissioner