

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

Joshua S. Ford,  
Appellant,

v.

Sarpy County Board of Equalization,  
Appellee.

Case No: 15R 0133

Decision and Order Reversing  
County Board of Equalization

**Background**

1. The Subject Property is a 2,072 sq. ft. ranch style home, with a legal description of: Lot 9 Titan Springs, Papillion, Sarpy County, Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$330,214 for tax year 2015.
3. The Taxpayer protested this value to the Sarpy County Board of Equalization (the County Board) and requested an assessed value of \$283,712 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$330,214 for tax year 2015.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on July 27, 2016, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Joshua Ford was present at the hearing (the Taxpayer).
8. Jackie Morhead and Lesa Ryan of the Sarpy County Assessor’s Office were present for the County Board.

**Applicable Law**

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

<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</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). “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.” *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

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>

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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer alleged that the assessed value of the Subject Property was not uniform and proportionate when compared to the assessed values of other houses in the area, particularly the house located at 1906 Longview Street (the Neighbor’s House).
17. The County presented the property record files for several properties located in the Subject Property’s subdivision, including the Neighbor’s House.
18. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>9</sup>
19. A review of the property record cards for properties in the Subject Property’s subdivision indicate that differences in assessed values are accounted for in differences in physical characteristics (i.e. quality, condition, age, square footage, amount of basement finish, garages, etc).
20. The Taxpayer requested an assessed value of \$283,712, based on the average per square foot assessed valuations for ranch style homes in the Subject Property’s subdivision and the lot value as determined by the county.

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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(9) (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.).

<sup>9</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

21. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.<sup>10</sup> The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.<sup>11</sup> The comparison of assessed values of dissimilar parcels is not recognized as an appropriate approach.<sup>12</sup>
22. The Taxpayer alleged that the rezoning of the parcel across the street from the Subject Property to allow for apartments to be built on it would reduce the value of the Subject Property.
23. The change in zoning did not occur until after the assessment date of January 1, 2015.<sup>13</sup>
24. The Taxpayer alleged that the physical characteristics of the Subject Property listed on the property record file were incorrect and that correcting for these errors would reduce the assessed value of the subject property.
25. The County's Appraiser stated that she inspected the Subject Property in July of 2016 and determined based on this inspection that the physical characteristics of the Subject Property for the 2015 assessment date should be corrected. The County's Appraiser further stated that based on these corrections, the assessed value of the Subject Property for tax year 2015 should be \$318,314.
26. 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.
27. The Taxpayer has adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be vacated.

## ORDER

### IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2015 is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$ 33,000
<u>Improvements</u>	<u>\$285,314</u>
Total	\$318,314

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

<sup>11</sup> Id.

<sup>12</sup> See generally, *Lienemann v. City of Omaha*, 191 Neb. 442, 215 N.W.2d 893 (1974) (holding that the assessed values of real property was not admissible evidence of actual value in a condemnation case accepting that while assessed values are required to be set at actual value, errors may occur resulting in an assessed value that is not at actual value).

<sup>13</sup> See, Neb. Rev. Stat. §77-1301 (2014 Cum. Supp.)

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 2015.
7. This Decision and Order is effective on October 20, 2016.

Signed and Sealed: October 20, 2016

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Steven A. Keetle, Commissioner