

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

Everett C. Wiley III,  
Appellant,

v.

Hall County Board of Equalization,  
Appellee.

Case No: 15R 0031

Decision and Order Reversing Hall  
County Board of Equalization

Background

1. The Subject Property is a residential parcel improved with a 2,208 square foot one story family dwelling, with a legal description of: Lot 6 XC S 20', Fairacres Dairy Sub, Grand Island, Hall County, Nebraska.
2. The Hall County Assessor (the County Assessor) assessed the Subject Property at \$177,674 for tax year 2015.
3. The Taxpayer protested this value to the Hall County Board of Equalization (the County Board) and requested an assessed value of \$126,244 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$177,674 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 August 31, 2016 at the Hamilton County Courthouse, Aurora, Nebraska, before Commissioner Nancy J Salmon.
7. Everett C. Wiley III (the Taxpayer) was present at the hearing.
8. Jack Zitterkopf, Hall County Attorney, was present for the County Board.
9. Jan Pelland, Hall County Assessor, was also present.

Applicable Law

10. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
11. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
12. 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>

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

#### Findings of Fact & Conclusions of Law

17. The Taxpayer’s appeal questions the valuation placed on his residential property by the County Assessor. In support of his position, the Taxpayer provided the Commission with a written appraisal prepared by Justin L. Runyan, a certified residential appraiser from Hastings, Nebraska. Mr. Runyan did not personally appear on behalf of the Taxpayer. The appraisal valued the Subject Property at \$135,000 as of April 14, 2014. The stated purpose of the appraisal was to verify the completion of an addition to the Subject Property for financing purposes and to determine if the Subject Property had declined in value since a prior appraisal was prepared.
18. The submitted evidence indicates that the Subject Property was originally constructed in 1949, with updates of new windows, kitchen and bathroom improvements, and vinyl siding completed in the last 11-15 years. The original size of the home was 912 square feet. A new addition of 1,296 square feet was completed in 2014. The total square footage is now 2,208 square feet.
19. The County Assessor indicated that she was concerned with the three comparable sales described in the appraisal submitted by the Taxpayer. Specifically, she noted that the

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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.).

appraisal does not document that the comparable properties have been updated similarly to the Subject Property or whether they have additions similar to the Subject Property.

20. The County Assessor explained the process utilized in her valuation of the Subject Property. She also noted that she did not dispute that square footage for the basement as described in the Taxpayer's appraisal. The Property Record Card indicated that the basement square footage was 1,296 square feet. The Runyan appraisal indicated that the square footage of the basement was actually 168 square feet. The County Assessor indicated that after reducing the basement square footage to 168 square feet, her opinion of the value of the Subject Property would be \$165,014.
21. Upon review of the submitted information and documentation, the Commission notes that it lacks sufficient information regarding the Runyan appraisal. The new addition to the Subject Property comprises approximately 59% of its square footage. Although the three comparable properties are of similar age to the Subject Property, there is no indication that any of the three comparable properties has been updated or has an addition. As was previously noted, in order to successfully demonstrate that a property has been overvalued, a Taxpayer must introduce competent evidence of overvaluation by clear and convincing evidence. Because the Commission is unable to determine if the comparable properties noted in the appraisal are in fact comparable to the Subject Property, it cannot conclude that the Subject Property is overvalued.
22. The County Assessor did not dispute that an error was made with respect to the square footage of the basement of the Subject Property. Accordingly, 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.
23. Regarding the basement square footage, 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	\$ 9,706
<u>Improvements</u>	<u>\$155,308</u>
Total	\$165,014

3. This Decision and Order, if no further action is taken, shall be certified to the Hall County Treasurer and the Hall 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 September 2, 2016.

Signed and Sealed: September 2, 2016.

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Nancy J. Salmon, Commissioner