

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Klaus U Schoenherr
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 14R 004 and 15R 012

Decision and Order Reversing the Decisions
of the 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. Klaus U Schoenherr 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 (the County Board).
4. The Subject Property is a 1,900 square foot two story residential property located at 10714 S. 27th Ave, Bellevue, Sarpy County, Nebraska, with a legal description of: Lot 67 Brook Park (Subject Property).

Background

5. The Sarpy County Assessor (the Assessor) assessed the Subject Property at \$193,377 for tax year 2014.
6. The Taxpayer protested this value to the Sarpy County Board and requested an assessed value of \$187,680 for tax year 2014.
7. The Sarpy County Board determined that the taxable value of the Subject Property was \$193,377 for tax year 2014.
8. The Sarpy County Assessor (the Assessor) assessed the Subject Property at \$197,036 for tax year 2015.
9. The Taxpayer protested this value to the Sarpy County Board and requested an assessed value of \$187,680 for tax year 2015.
10. The Sarpy County Board determined that the taxable value of the Subject Property was \$197,036 for tax year 2014.
11. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

12. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1 of each tax year in question.¹

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

13. 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
14. 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
15. 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
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷
17. 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
18. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁹
19. The Taxpayer argued that the increase in assessed value of the Subject Property from tax year 2013 to tax year 2014 and from tax year 2014 to tax year 2015 was unreasonable.
20. The Taxpayer further argued that increases in assessed value should be addressed when property is sold and then only increased if a profit is derived on the sale of the property.
21. 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

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.*

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).

22. The Taxpayer indicated that his opinion of value for the Subject Property was \$192,998, for tax year 2014 and tax year 2015, based on the revised valued determined by the Sarpy County Assessor's office made after an inspection of the Subject Property in May of 2015.
23. Shane Grow, from the Sarpy County Assessor's, office indicated that he inspected the interior and exterior of the Subject Property on May 6, 2015, and as a result of that inspection made adjustment to the basement size, amount of finished basement and patio size. When these changes were made the result would be an assessed value of the Subject Property of \$192,998 for tax year 2014, and 196,632 for tax year 2015.
24. 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.
25. 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	\$ 28,000
Improvements	<u>\$164,998</u>
Total	\$192,998

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

Land	\$ 28,000
Improvements	<u>\$168,632</u>
Total	\$196,632

5. 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.).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.

7. Each Party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax year 2014 and 2015.
9. This Decision and Order is effective on February 23, 2016.

Signed and Sealed: February 23, 2016

Steven A. Keetle, Commissioner