

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Craig C. Gertsch,
Appellant,

v.

Platte County Board of Equalization,
Appellee.

Case No: 15R 0070

Decision and Order Affirming Platte
County Board of Equalization

Background

1. The Subject Property is a residential parcel improved with a 1998 Manufactured home and detached garage, with a legal description of: Lot 6, Blk E, Monroe, Platte County, Nebraska.
2. The Platte County Assessor (the County Assessor) assessed the Subject Property at \$46,285 for tax year 2015.
3. The Taxpayer protested this value to the Platte County Board of Equalization (the County Board) and requested an assessed value of \$28,625 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$42,290 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 December 7, 2016, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Nancy J. Salmon.
7. Craig C. Gertsch and Michelle Shemek were present at the hearing for the Taxpayer.
8. Elizabeth Lay, Deputy County Attorney and Tom Placzek, Platte County Assessor 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 1.¹
10. The Commission's review of the determination of the County Board of Equalization is de novo.²

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). "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).

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.”³ 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.”⁴
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.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
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.⁷
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The Taxpayer purchased the Subject Property in January, 2013 for the sum of \$45,000. For tax year 2013, the assessed valuation was \$20,875, but it increased to \$46,285 for tax year 2014. The taxpayer is concerned about the increase since no improvements have occurred since the Subject Property was acquired. He also asserts that the purchase price included personal property.
17. The County Assessor stated that properties in Monroe were revalued in 2014 using the sales comparison approach. The Subject Property was compared to two similar properties in Monroe, resulting in the change in valuation. With respect to the Taxpayer’s assertion regarding the property’s prior assessment, the Commission is unable to consider a prior assessment. The assessed value for real property may be different from year to year, dependent upon the circumstances. See, *Affiliated Foods Coop v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988). For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation. See, *Devore v. Bd. of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ 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).

⁸ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

The submitted documentation (Form 521) does not reflect any personal property being a part of the sale. As such, there is no quantification of any personal property.

18. The Taxpayer also contended that he purchased the property at above market value as a means of allowing his daughter and granddaughter to continue to reside in the Columbus area.
19. Based upon the submitted documentation, the Commission finds no evidence to conclude that the Taxpayer's purchase of the Subject Property was anything other than an arms-length transaction.
20. 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.
21. The Taxpayer has not 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 affirmed.

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 Affirmed.
2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$ 3,625
<u>Improvements</u>	<u>\$38,665</u>
Total	\$42,290

3. This Decision and Order, if no further action is taken, shall be certified to the Platte County Treasurer and the Platte 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 December 14, 2016.

Signed and Sealed: December 14, 2016.

Nancy J. Salmon, Commissioner