

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Thomas S. Wrigley Sr.,
Appellant,

v.

Platte County Board of Equalization,
Appellee.

Case No: 16R 0010

Decision and Order Affirming Platte
County Board of Equalization

Background

1. The Subject Property is a residential parcel improved with a 1,104 square foot bi-level single family dwelling, with a legal description of: Lot 47 Stires Lake Addition and abutting .07 ac tract, Platte County, Nebraska.
2. The Platte County Assessor (the County Assessor) assessed the Subject Property at \$207,260 for tax year 2016.
3. The Taxpayer protested this value to the Platte County Board of Equalization (the County Board) and requested an assessed value of \$192,980 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$207,260 for tax year 2016.
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 6, 2017, at the Ramada Columbus & Rivers Edge Convention Center, 265 33rd Avenue, Columbus, Nebraska, before Commissioner Nancy J Salmon.
7. Taxpayer Thomas S. Wrigley Sr. was present at the hearing on behalf of himself.
8. Thomas Placzek, Platte County Assessor and Elizabeth Lay, Platte County Deputy County Attorney, 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) (2016 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’s principal concern involves the fact that his home was revalued by the County Assessor in 2014, resulting in a 16.53% increase and was again revalued in 2016, resulting in an additional 10% increase.
17. 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 N.W.2d 201 (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, 451 N.W.2d 451 (1944). The County Assessor indicated to the Commission that lake properties in Platte County were revalued in 2014 and again in 2016 because market statistics indicated that such properties were not at market value for those two years.
18. The Taxpayer brought several alleged comparable properties to the attention of the Commission. The Commission notes that the Taxpayer included the garage and basement square footages in the total square footage. The main floor living, basement living and garage footage are all assessed on a separate unit value using the cost

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) (2016 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) (2016 Cum. Supp.).

approach. The correct procedure is to use the above grade square footage. Definition of gross living area is the total area of finished, above-grade residential space, calculated by measuring the outside perimeter of the structure and includes only finished, habitable, above-grade living space. Finished basements and attic areas are not generally included in the total gross living area.⁹

19. The alleged comparable properties provided by the Taxpayer ranged in style, size, basements, garages, and physical characteristics. The Taxpayer's residential structure is a bi-level home while the comparables were ranch style homes. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰ The Commission finds that the properties included in the Taxpayer's alleged comparable properties are not truly comparable. The County Assessor provided four sales, all of which were in the same market area (Stires Lake). He noted that he used a cost approach and market depreciation to value the Subject Property, as well as the sales discussed.
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 2016, is Affirmed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$ 50,000
<u>Improvements</u>	<u>\$157,260</u>
Total	\$207,260

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 (2016 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.

⁹ *The Appraisal of Real Estate, Thirteenth Edition*, Appraisal Institute, page 237.

¹⁰ See generally, *Property Assessment Valuation, 3rd Ed.*, International Association of Assessing Officers (2010) at 169-79.

5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2016.
7. This Decision and Order is effective on July 18, 2017.

Signed and Sealed: July 18, 2017

Nancy J Salmon, Commissioner