

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Timothy R. O'Neill,
Appellant,

v.

Hall County Board of Equalization,
Appellee.

Case No: 16R 0206

Decision and Order Affirming the Decision
of the Hall County Board of Equalization

Background

1. The Subject Property is three-unit residential parcel located at 1403/1405/1407 Hope Street, City of Grand Island, Hall County, Nebraska. The legal description of the parcel is found in the Case File.
2. The Hall County Assessor (the County Assessor) assessed the Subject Property at \$155,410 for tax year 2016.
3. The Taxpayer protested this value to the Hall County Board of Equalization (the County Board) and requested an assessed value of \$108,651 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$155,410 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 June 23, 2017, at the Holiday Inn Express, 508 2nd Avenue South, Kearney, Nebraska, before Commissioner Robert W. Hotz.
7. Timothy R. O'Neill was present at the hearing.
8. Jack Zitterkopf, Hall County Attorney, and Jan Pelland, Hall 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
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

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).

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 subdivided a vacant parcel in 2003 in order to build a three unit multi-family residential use building.
17. As of tax year 2016, the Subject Property was subject to a 1,608 square foot utility easement. The Taxpayer was unable to quantify what effect the easement had on the actual value of the property.
18. The Taxpayer raised the issue of an alleged comparable property, but no property record card was provided in order to make appropriate comparisons.
19. The Taxpayer provided property information regarding two residential properties in the neighborhood of the Subject Property where the land component of each property was valued at \$1 per square foot.⁹ The land component of the Subject Property was valued at \$1.75 per square foot. The area of the Subject Property was 26,966 square feet. The area of each of the alleged comparable properties was 25,759 square feet and 26,220 square feet. All three of the parcels were used for residential purposes.
20. The significant difference between the Subject Property and these two alleged comparable parcels was that the Subject Property was zoned for multi-family use while both alleged comparable parcels were zoned for single family use. As a result, the Subject

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.).

⁹ See, Case File: 1322 S. Sylvan and 1305/1307 Hope Street.

Property would have been included in a different mass appraisal model that analyzed sales of properties for multi-family uses. The two alleged comparable parcels would have been included in a mass appraisal model analyzing sales of parcels used for single family purposes. The application of these two different models is reasonable. The Commission therefore finds that there is no violation of uniformity standards required by Nebraska law when the land component of the Subject Property used for multi-family purposes is assessed at a different rate per square foot than the land component of other properties that are used for single family purposes.

21. The Taxpayer produced no other information that would be sufficient to prove that the County Board determination of value was arbitrary or unreasonable.
22. 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.
23. 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	\$ 26,966
Improvement	<u>\$128,444</u>
Total	\$155,410

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 (2016 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 2016.
7. This Decision and Order is effective on August 15, 2017.

Signed and Sealed: August 15, 2017

Robert W. Hotz, Commissioner