

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Christopher J. Anderson,
Appellant,

v.

Merrick County Board of Equalization,
Appellee.

Case No: 17R 0142

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is single family dwelling, with a legal description of: Replat of Lakeview Add Lot 5 45-4CC (TIF Project-Lakeview 2009) S-T-R 16-13-06.
2. The Merrick County Assessor (the County Assessor) assessed the Subject Property at \$299,410 for tax year 2017.
3. Christopher J. Anderson (the Taxpayer) protested this value to the Merrick County Board of Equalization (the County Board) and requested an assessed value of \$265,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$299,410 for tax year 2017.
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 2, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Christopher J. Anderson was present at the hearing for the Taxpayer.
8. Jan Placke, the County Assessor, and Lynelle Homolka, Merrick 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 feels the Subject Property is valued in excess of market value as evidenced by an appraisal dated October 13, 2016. However, the appraisal used incorrect square footage of 1,524 for the Subject Property, due to the appraiser not adding some main floor square footage overhanging the attached garage. The Taxpayer and the County Assessor agree that the actual main floor square footage is 1,616.
17. The County Board highlighted discrepancies in the Taxpayer’s appraisal. Incorrect square footage was used for the subject property as well as four of the comparable sales. The differences in square footage used by the appraiser would likely result in a different estimate of value; therefore, the Commission deems the appraisal not reliable evidence of the actual value of the Subject Property.
18. The Taxpayer also feels the land values are incorrect and developed a price per square foot comparison of neighboring properties’ land values to highlight the difference. He stated two larger lots in the Lakeview Subdivision had a lower price per square foot than his lot. The County Assessor stated that properties in this subdivision were valued as a

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.).

site rather than price per square foot. It is acceptable for Assessors to use site value when the market does not indicate a significant difference in value although there is a variance in the size, frontage or shape of the sites.⁹

19. The County Assessor stated she values properties with the cost approach and utilizes a depreciation model that was developed with help from the Property Assessment Division of the Nebraska Department of Revenue.
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 2017, is Affirmed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 37,500
<u>Improvements</u>	<u>\$261,910</u>
Total	\$299,410

3. This Decision and Order, if no further action is taken, shall be certified to the Merrick County Treasurer and the Merrick 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 2017.
7. This Decision and Order is effective on July 12, 2018.

Signed and Sealed: July 12, 2018

James D. Kuhn, Commissioner

⁹ See, e.g., International Association of Assessing Officers, *Property Assessment Valuation*, 177 (Garth E. Thimgan et al. eds., 3d ed. 2010).