

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Chad R. Lemburg,

Staci and Chad Lemburg,
Appellants,

v.

Merrick County Board of Equalization,
Appellee.

Case No: 16R 0003

Case No: 17R 0030

Decision and Order Reversing the
Determinations of the
Merrick County Board of Equalization

Background

1. The Subject Property is a single family home, with a legal description of: Podrozas Sub Lots 4-5-6 Tax Lot V 5-30SCV 33-16-03.
2. The Merrick County Assessor (the County Assessor) assessed the Subject Property at \$317,285 for tax year 2016 and \$308,470 for tax year 2017.
3. Chad and Staci Lemburg (the Taxpayers) protested these values to the Merrick County Board of Equalization (the County Board) and requested assessed values of \$272,295 for tax year 2016 and \$270,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$308,315 for tax year 2016 and \$308,470 for tax year 2017.
5. The Taxpayers appealed these determinations of the County Board to the Tax Equalization and Review Commission (the Commission).¹
6. A Single Commissioner hearing was held on July 2, 2018, at the Law Enforcement Center, 111 Public Safety Drive, Community Meeting Room, Grand Island, Nebraska, before Commissioner James D. Kuhn.
7. Staci Lemburg was present at the hearing on behalf of the Taxpayers.
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 1.²
10. The Commission's review of the determination of the County Board of Equalization is de novo.³

¹ Case No. 16R 0003 relates to tax year 2016; Case No. 17R 0030 relates to tax year 2017.

² See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

³ 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.”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
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.⁶
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷
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.⁸
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁹

Findings of Fact & Conclusions of Law

16. The Taxpayer asserted that the Subject Property was overvalued due to the remote location of the Subject Property and access being a gravel road.
17. The Taxpayer provided numerous property record cards (PRCs) of homes she felt were similar to the Subject Property. Many of these properties were from Polk County, Platte County and Nance County, and were not considered comparable by the Commission. Two of the properties were from Merrick County. However, neither of these properties has a basement and the Subject Property has a basement; thus, these two properties are also not considered comparable to the Subject Property.
18. The Taxpayer also took issue with the land valuation; she felt her land value should be lowered due to location of the Subject Property. The Taxpayer provided PRCs from comparable properties to show discrepancies in land value. The County Assessor stated that the Subject Property is being valued on a “Front Foot” basis, which is the same for all other similar properties throughout the county.

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(9) (2016 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) (2016 Cum. Supp.).

19. The County Assessor stated that she uses generally accepted mass appraisal practices when assessing properties in Merrick County. She stated that she uses a depreciation model developed with help from the Nebraska Department of Revenue, Property Assessment Division.
20. An appraisal dated August 8, 2016 was performed on the Subject Property for refinance purposes; this appraisal concluded that the market value of the Subject Property was \$270,000.
21. The County Assessor stated that private appraisals may be skewed by the appraiser's prior knowledge of value needed for an appraisal, and for this reason, she does not use appraisals for valuing properties in Merrick County.
22. An independent appraisal, performed according to professional standards, is considered competent evidence of value under Nebraska law.¹⁰ Although the appraisal was performed approximately seven months after the assessment date of January 1, 2016, there is little reason to believe the value of the property declined more than \$30,000 during those months. The appraisal is the best evidence of the actual value of the Subject Property provided to the Commission at the hearing, for both tax years.
23. The Taxpayers have produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
24. The Taxpayers have adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be vacated and reversed.

ORDER

IT IS ORDERED THAT:

25. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property are Vacated and Reversed.
26. The taxable value of the Subject Property is:

Case No. 16R 0003 (2016):	\$270,000
Case No. 17R 0030 (2017):	\$270,000
27. 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.).

¹⁰ See *JQH La Vista Conf. Center Development LLC v. Sarpy Cty. Bd. of Equal.*, 528 Neb. 120, 825 N.W.2d 447 (2013).

28. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
29. Each Party is to bear its own costs in this proceeding.
30. This Decision and Order shall be applicable only to tax year 2016 and tax year 2017.
31. This Decision and Order is effective on July 11, 2018.

Signed and Sealed: July 11, 2018

James D. Kuhn, Commissioner