

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

MH – Garden, LLC,
Appellant,

v.

Keith County Board of Equalization,
Appellee.

Case Nos: 17R 0031 & 17R 0032

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Properties are two residential lots. One is improved with a Utility Building, with a legal description of: LOT 9 BLK 5 MAKO’-CH-MNI SUB 1A-0----16 S-T-R: 02-14-39. The legal description of the vacant lot is LOT 10 BLK 5 MAKO’-CH-MNI SUB 1A-0----16 S-T-R: 02-14-39.
2. The Keith County Assessor (the County Assessor) assessed the Subject Properties as follows for 2017:

17R 0031	Land	\$ 50,000
	<u>Improvements</u>	<u>\$ 50,925</u>
	Total	\$100,925
17R 0032	Land	\$ 50,000
	<u>Improvements</u>	<u>\$ 0</u>
	Total	\$ 50,000

3. MH – Garden, LLC (the Taxpayer) protested these values to the Keith County Board of Equalization (the County Board) and requested assessed values of \$65,925 (17R 0031) and \$15,000 (17R 0032) for tax year 2017.
4. The County Board determined that the taxable values of the Subject Properties was as stated in paragraph 2 above for tax year 2017.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on June 5, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Milton Rogge was present at the hearing for the Taxpayer.
8. Randy Fair, County Attorney, and Renae Zink, 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 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 Subject Property consists of two residential lots in a subdivision located adjacent to Lake McConaughy in Keith County.
17. The Taxpayer asserted that the Subject Properties were being overvalued due to no view of the lake, no paved road to the property, no maintenance of dirt road leading to its

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).

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.).

parcels and other lots in the area having a view of the lake yet valued lower than the Subject Properties.

18. One of the Subject Properties (Case No. 17R 0031) is improved with a utility building, but no testimony was given as to the value of the building.
19. The Taxpayer offered a plat map of the Mako'-Ch-Mni subdivision. Some of the lots on this map have since been replatted and combined making some of the properties one lot instead of two or more separate lots. The County Assessor values these parcels by the lot and not by the square footage, although size of the lots are a factor in the valuation.
20. The County Assessor testified she had an appraisal company, Tax Valuation Inc., help her revalue lots in the subdivisions around the lake in 2015. Tax Valuation Inc. developed a three tier valuing system that valued lots by location, size, view, and access to the lake. A sales analysis, regression analysis, and physical review of the properties were done for setting lot values. Lakefront lots or "Good Lots" (neighborhood 9010) were valued at \$70,000, "Average Lots" (neighborhood 9011) were valued at \$50,000, and "Low Valued Lots" (neighborhood 9012) were valued at \$30,000.
21. The Taxpayer offered property record cards of comparable properties to show that their lot values are less than those placed upon the Taxpayer's lots, however, the properties have had their lots replatted and combined.⁹
22. The evidence presented at the hearing demonstrated that all lots in the area are assessed uniformly and proportionately pursuant to the three tier system developed by the County Assessor in conjunction with Tax Valuation Inc.¹⁰
23. 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.
24. The Taxpayer has not 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 affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable values of the Subject Properties for tax year 2017, are Affirmed.
2. The taxable values of the Subject Properties for tax year 2017 are:

⁹ An example of this is Parcel ID 243100200 where the Taxpayer asserts that the lot value is \$16,667 for each of the three lots totaling \$50,000. In actuality, the three lots have been replatted into one lot, which is valued at \$50,000 as it is an Average Lot determined by Tax Valuation Inc.

¹⁰ Notably, the Taxpayer obtained relief in an appeal to the Commission for tax year 2016; however, the information upon which that determination was made is not the evidence before the commission in the present appeal. See *MH – Garden, LLC v. Keith Cty. Bd. of Equal.*, Commission Case Nos. 16R 0031 & 16R 0032. In the present appeal, the evidence adduced at the hearing indicates that all lots in the area were valued uniformly under a three tier system in which factors such as location, size, view, and access to the lake are taken into consideration.

17R 0031	Land	\$ 50,000
	<u>Improvements</u>	<u>\$ 50,925</u>
	Total	\$100,925
17R 0032	Land	\$ 50,000
	<u>Improvements</u>	<u>\$ 0</u>
	Total	\$ 50,000

3. This Decision and Order, if no further action is taken, shall be certified to the Keith County Treasurer and the Keith 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 June 13, 2018.

Signed and Sealed: June 13, 2018.

James D. Kuhn, Commissioner