BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Harvey Varenhorst, Jennifer & Harvey Varenhorst, Appellants, v. Otoe County Board of Equalization, Appellee.	Case Nos: 17R 0078 18R 0203 Decision and Order Affirming County Board of Equalization

Background

1. The Subject Property in these consolidated appeals is a single family dwelling, with a legal description of: All Lots 9-11 & Vac Adj Street Blk 29 Kearney Add. to Nebraska City.
2. The Otoe County Assessor (the Assessor) assessed the Subject Property at $34,010 for tax year 2018 and $32,440 for tax year 2017.
3. Harvey Varenhorst and Jennifer Varenhorst (collectively, the Taxpayers) protested these values to the Otoe County Board of Equalization (the County Board) and requested an assessed value of $19,240 for tax year 2018 and $17,340 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was $34,010 for tax year 2018 and $32,440 for tax year 2017.
5. The Taxpayers appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on May 22, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Harvey Varenhorst and Jennifer Varenhorst were present at the hearing.
8. Sarah Wiltse, Deputy County Attorney, and Christina Smallfoot, the 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]

[1] Neb. Rev. Stat. §77-1301(1) (Reissue 2018).
[2] See Neb. Rev. Stat. §77-5016(8) (Reissue 2018), *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 Taxpayers feel the assessed value is in excess of market value for a number of reasons. Mr. Varenhorst stated that no improvements have been made to his home to justify an increase in valuation. The only things done to the Subject Property were to repair and replace windows, replace a door, pour some concrete over the brick pavers in the driveway and add a small concrete pad for a patio. Mr. Varenhorst also said the only access to the back two lots of the property is through his yard since the county blocked his access from the alley. Mr. Varenhorst's limited mobility makes it difficult if not impossible to access his back two lots because the county piled concrete in front of his access point in the alley. According to Jennifer Varenhorst Wohlers, daughter of Mr. Varenhorst and co-owner, there is an embankment to the rear lots that also make access difficult.
17. Mr. Varenhorst stated the Subject Property is heated by space heaters and cooled by a window air conditioner. He also believes the Assessor is incorrect in the square footage of the Subject Property. Only two rooms are finished in the Subject Property, a bedroom

[3] *Brenner v. Banner Cty. Bd. of Equal*., 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).
[4] *Id*.
[5] Neb. Rev. Stat. §77-5016(9) (Reissue 2018).
[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. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).
[8] Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

and a living room; the kitchen and bathroom are unfinished according to the Taxpayers. The fact that only two rooms are finished are irrelevant as the Assessor uses exterior measurements to determine the square footage of a home; the finished or unfinished portions of a home would be a consideration for quality, condition or some other type of depreciation.

18. The Taxpayers offered a property at 404 4th Ter. as a comparable. Mr. Varenhorst stated this home sold for $15,000 in 2017, which shows his home is being overvalued. The Assessor stated the property was in great disrepair at the time of sale and will be visited to check for improvements, but she did not consider this home to be a good comparable.
19. Mr. Varenhorst stated that he tried to sell the Subject Property in either 2016 or 2017. He said he was asking $17,000 and put a sign in his yard. The Subject Property was not listed with an agent, nor was it advertised other than the sign in the front yard, which was frequently either blow over or knocked down. The Commission is not persuaded that an attempted sale under these conditions constitutes competent evidence that the Subject Property is worth less than $17,000.
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 decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2017 and 2018 are affirmed.
2. The taxable value of the Subject Property for tax years 2018 and 2017 are:

2018	
Land	$ 9,970
Improvements	$24,040
Total	$34,010

2017	
Land	$ 8,400
Improvements	$24,040
Total	$32,440

3. This Decision and Order, if no further action is taken, shall be certified to the Otoe County Treasurer and the Otoe County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2018).
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 years 2018 and 2017.
7. This Decision and Order is effective on June 3, 2019.

Signed and Sealed: June 3, 2019

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James D. Kuhn, Commissioner