

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

William A. Luhrs,
Appellant,

v.

Chase County Board of Equalization,
Appellee.

Case No: 17R 0116

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

Background

1. The Subject Property is a residential parcel located at 62 S. Center Street, Wauneta, Chase County, Nebraska, with a legal description of: Pt Lot 6 Blk 2 Dimicks Add (50 X 134') 536 WAU.
2. The Chase County Assessor (the County Assessor) assessed the Subject Property at \$49,881 for tax year 2017.
3. William A. Luhrs (the Taxpayer) protested this value to the Chase County Board of Equalization (the County Board) and requested an assessed value of \$35,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$49,881 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 June 26, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. William A. Luhrs and Mary Luhrs were present at the hearing.
8. Rory Roundtree, Deputy Chase County Attorney, and Dorothy Bartles, Chase 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

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

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 asserted that the Subject Property was overvalued as compared with similar properties and that conditions in and around the Subject Property were worse than understood by the County Assessor in making the assessment. These negative conditions included hail damage to the roof and deterioration to the basement foundation.
17. Because the County Assessor had not been able to conduct an interior inspection to determine the condition of the Subject Property prior to this hearing, the parties agreed at the hearing to complete an interior inspection of the Subject Property.
18. On June 27, 2018, the Commission issued an order requiring the parties to arrange an internal inspection of the Subject Property no later than August 15, 2018. The purpose of this inspection was to obtain additional information about the condition of the Subject Property and to quantify what effect the damage to the roof, deterioration to the basement, and any other condition issue would have on the assessed value of the Subject Property.

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. 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) (2016 Cum. Supp.).

19. Subsequent to the Commission's Order, the Taxpayer failed or refused to permit entry to the interior of the Subject Property for the purpose of the inspection.
20. To the extent the County Assessor could comply with the Commission's Order, without the owners' permission to enter the premises for an internal inspection, the County Assessor conducted an inspection of the exterior of the Subject Property.
21. Based upon what could be observed without an internal inspection, the County Assessor determined that the previous assessment of \$49,881 was correct. The County Assessor also determined that the assessed value was uniform and proportionate to the assessed values of similar properties in the market area, and had been determined using the same mass appraisal model.
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 2017 is affirmed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 1,742
<u>Improvements</u>	<u>\$48,139</u>
Total	\$49,881

3. This Decision and Order, if no further action is taken, shall be certified to the Chase County Treasurer and the Chase 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 September 7, 2018.

Signed and Sealed: September 7, 2018

Robert W. Hotz, Commissioner