

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Kenneth F. Heatherly,
Appellant,

v.

Dodge County Board of Equalization,
Appellee.

Case No: 17R 0144

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family dwelling with a detached single family residence, with a legal description of: Woodland Lakes Sub Lot 7.
2. The Dodge County Assessor (the Assessor) assessed the Subject Property at \$426,240 for tax year 2017.
3. Kenneth F. Heatherly (the Taxpayer) protested this value to the Dodge County Board of Equalization (the County Board) and requested an assessed value of \$269,796 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$426,240 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 October 29, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. The Taxpayer was present at the hearing.
8. Brent Quandt, Deputy Dodge County Attorney, and Chad Housen, 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 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’s first issue is with the valuation of the land for the Subject Property. He stated that the valuation of the larger lots in the Woodland Lakes area showed a lower price per acre than the Subject Property. The Assessor testified that his office values the land at Woodland Lakes by the lot and not by the acre, with owners of multiple lots receiving a developer’s discount price on the excess lots as long as they were joining the first lot. The first lot is valued the same for the entire subdivision and the excess lots are valued at 40% less than the first lot.
17. The Taxpayer’s second issue is with the improvement value of the Subject Property. The Subject Property consists of a 2,600 square foot home and a detached 600 square foot cabana (also referred to as the mother-in-law suite). The Taxpayer combined the two square footages to arrive at 3,200 square feet. The comparable property owned by Judith Christensen is a one and a half story home consisting of 3,200 square feet, thus making it comparable to the Subject Property according to the Taxpayer.

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.).

18. The Assessor stated that a person cannot simply add the two square footages together to arrive at one square footage for the Subject Property. The main house was built in 2012 and the cabana was built in 2015; these are separate buildings with differing ages and depreciation allowances. The comparable property is a one and a half story home which would be valued less per square foot than a one story home. The Assessor doesn't feel that the two properties are comparable. The Assessor acknowledged there is a lack of sales data on this subdivision as there are very few improved parcels. As a result, the Assessor is relying on the cost approach and deprecation model to value the Subject Property. The Assessor also uses sales of homes on other lakes to help develop the depreciation model.
19. The Taxpayer did not provide any property record cards for comparable homes or lot values to show the Subject Property was being valued unfairly and was not able to justify his requested valuation by competent evidence.
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 \$426,240.
3. This Decision and Order, if no further action is taken, shall be certified to the Dodge County Treasurer and the Dodge 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 November 2, 2018.

Signed and Sealed: November 2, 2018.

James D. Kuhn, Commissioner