

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Luke J. Jensen,
Appellant,

v.

Otoe County Board of Equalization,
Appellee.

Case No: 17R 0651

Decision and Order Reversing the Decision
of the Otoe County Board of Equalization

Background

1. The Subject Property is a residential parcel with a legal description of Lot 2, Orchard Park Addition, Nebraska City.
2. The Otoe County Assessor (the County Assessor) assessed the Subject Property at \$240,040 for tax year 2017.
3. Luke J. Jensen, (the Taxpayer) protested this value to the Otoe County Board of Equalization (the County Board) and requested an assessed value of \$207,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$240,040 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 February 15, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Luke J. Jensen was present at the hearing.
8. John Palmtag, Deputy Otoe County Attorney, and Christina Smallfoot, Otoe 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

¹ See, 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).

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. In the course of the hearing, the Taxpayer and the County Assessor exchanged information about the characteristics of the Subject Property. On the basis of this information, the parties determined and mutually stipulated that the Subject Property should be assessed as follows: land, \$29,950; improvements, \$195,000.
17. The information presented constitutes clear and convincing evidence that the determination of value by the County Board of \$247,000 is unreasonable and the decision of the County Board should be vacated.

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 vacated and reversed.

³ *Brenner* at 283, 811.

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. Cty. 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).

2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 29,950
<u>Improvements</u>	<u>\$195,000</u>
Total	\$224,950

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 year 2017.
7. This Decision and Order is effective on February 20, 2019.

Signed and Sealed: February 20, 2019

Robert W. Hotz, Commissioner