

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Dennis J. Mahr,
Appellant,

v.

Dakota County Board of Equalization,
Appellee.

Case No: 17R 0242 & 18R 0016

Decision and Order Reversing the
Determination of the Dakota
County Board of Equalization

Background

1. The Subject Property is a 2,867 square foot one-and-one-half story residential property, with a legal description of: Lot 9 South Fork Addition, South Sioux City, Dakota County, Nebraska.
2. The Dakota County Assessor (the County Assessor) assessed the Subject Property at \$321,245 for tax year 2017.
3. Dennis J. Mahr (the Taxpayer) protested this value to the Dakota County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$321,245 for tax year 2017.
5. The County Assessor assessed the Subject Property at \$321,245 for tax year 2018.
6. The Taxpayer protested this value to the County Board and requested a lower assessed value for tax year 2018.
7. The County Board determined that the taxable value of the Subject Property was \$321,245 for tax year 2018.
8. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
9. A Single Commissioner hearing was held on August 29, 2018, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
10. Dennis J. Mahr was present at the hearing.
11. Jeff Curry, the County Assessor, and Sam Ferraro, an appraiser for the County Assessor's office, were present for the County Board.

Applicable Law

12. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

13. The Commission’s review of the determination of the County Board of Equalization is de novo.²
14. 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
15. 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
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
17. 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
18. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

19. The Taxpayer alleged that the assessed value of the Subject Property was too high for the 2017 and 2018 tax years.
20. The Taxpayer provided two appraisal reports for the Subject Property, each prepared by an independent appraiser and certified as complying with the Uniform Standards of Professional Appraisal Practice.
21. When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.⁹

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).

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).

⁹ *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013).

22. One appraisal report was completed in 2016 and finds a value of \$293,000 for the Subject Property (the 2016 Appraisal), and the other appraisal report was completed in 2018 and finds a value of \$285,000 for the Subject Property (the 2018 Appraisal).
23. The County Assessor alleged that both of the appraisal reports failed to account for the Subject Properties location adjacent to a golf course and the in-ground pool located on the Subject Property.
24. The 2016 Appraisal does not indicate that any adjustments were made for the comparable sales used to determine value not being located adjacent to a golf course or for their lack of swimming pools.
25. The 2018 Appraisal does make adjustments to the comparable sales for location, indicating that only the Subject Property was located on a golf course, and for not having an in-ground pool like the Subject Property.
26. The County Assessor stated that, based on the information presented at the hearing before the Commission, he would reclassify the miscellaneous improvement listed as a 576 square foot solid wall porch to a 576 square foot pergola, changing its contribution of value from \$8,560 to \$2,800 and reducing his opinion of value for the Subject Property to \$315,465 for tax years 2017 and 2018.
27. The County Board contends that the sale of the parcel two houses away from the Subject Property supports the determination of assessed value determined by the County Assessor. This property and the Subject Property both back up to the same golf course, have in ground pools, and are of the same quality and condition rating; however, the Subject Property is a one and one half story home while the sale is a ranch and the properties have different amenities.
28. The Taxpayer alleged that the value of the Subject Property was impacted by the school district in which it was located, alleging that South Dakota and Iowa were hotter markets, however no evidence quantifying the impact on assessed values was presented.
29. The Commission finds and determines, based on all of the information presented, that the actual or fair market value of the Subject Property as of the assessment dates is \$285,000.
30. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
31. The Taxpayer has 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 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 and 2018 are vacated and reversed.
2. The taxable value of the Subject Property for tax years 2017 and 2018 is:

Land	\$ 49,000
<u>Improvements</u>	<u>\$236,000</u>
Total	\$285,000

3. This Decision and Order, if no further action is taken, shall be certified to the Dakota County Treasurer and the Dakota 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 and 2018.
7. This Decision and Order is effective on April 24, 2019.

Signed and Sealed: April 24, 2019

Steven A. Keetle, Commissioner