

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Louis B. Egenberger,
Appellant,

v.

Cass County Board of Equalization,
Appellee.

Case No: 17R 0026

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is residential lot, with a legal description of: 14-12-10 North Lake Condo Unit 79A and undivided 1/116th interest common areas. The improvements to the lot, which were valued as a separate parcel for tax year 2017, are not a subject of this appeal.
2. The Cass County Assessor (the County Assessor) assessed the Subject Property at \$22,819 for tax year 2017.
3. Louis B. Egenberger (the Taxpayer) protested this value to the Cass County Board of Equalization (the County Board) and requested an assessed value of \$18,535 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$55,000 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 18, 2018 at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Louis B. Egenberger was present at the hearing.
8. Lori Huebner, County Assessor, was 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 believes the County Assessor incorrectly valued the Subject Property by adding the former Leasehold value to the current land value in arriving at the new land assessment.
17. North Lake Condominium Association purchased the Leasehold from Nebco in 2015 for \$5,000,000. After purchasing the Leasehold, North Lake Condominium Association sold the lots to owners of the improvements on leased land.
18. The Assessor stated that each of these lots sold for approximately \$55,000 according to the Real Estate Transfer Statements. The Assessor stated some lots sold for more because they were larger lots. Purchase prices on the property record files provided by the County reflect \$55,000 purchase prices on lots similar in size and quality to the Subject Property.
19. The Subject Property was assessed at \$22,819 for 2017. The Assessor stated that this was a clerical error and once the Taxpayer filed a protest on the Subject Property, the error was corrected by the County Board to reflect the actual value of \$55,000.

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.).

20. Although the Taxpayer believes his land value is incorrect, no sales of comparable vacant lots were provided to show his lot is being unfairly assessed. Simply disagreeing with the method used by the Assessor to arrive at a land value does not equate to the valuation being wrong. The Commission finds the numerous transfer values of \$55,000 for similar lots compelling evidence to show the Assessor is correctly valuing the Subject Property.
21. 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.
22. 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	\$55,000
<u>Improvements</u>	<u>\$ 0</u>
Total	\$55,000

3. This Decision and Order, if no further action is taken, shall be certified to the Cass County Treasurer and the Cass 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 October 25, 2018.

Signed and Sealed: October 25, 2018

James D. Kuhn, Commissioner