

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Karen T. Heibel,
Appellant,

v.

Saunders County Board of Equalization,
Appellee.

Case No: 17R 0127

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family home with a legal description of: Lot 89 Big Sandy Development 2nd Addition.
2. The Saunders County Assessor (the County Assessor) assessed the Subject Property at \$809,910 for tax year 2017.
3. Karen T. Heibel (the Taxpayer) protested this value to the Saunders County Board of Equalization (the County Board) and requested an assessed value of \$768,910 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$809,910 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 September 13, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Mark and Karen Heibel was present at the hearing for the Taxpayer.
8. Steven Twohig, Saunders County Attorney, 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
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 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).

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 submitted a list of homes in close proximity to the Subject Property with similar square footage, as well as a list of homes in the entire lake area with similar square footage. From this list, the Taxpayer feels the median price per square foot for the Subject Property should, according to the Taxpayer’s valuation method, be closer to \$209 per square foot instead of the \$220 per square foot of the current assessment (\$209 per square foot totals the value requested by the Taxpayer). In appraisals, simply dividing the assessed value by the square footage of a property is not a professionally accepted mass appraisal method. Many other variables including quality and condition, interior and exterior components, and location, must be considered when valuing real estate.
17. Kyle Morgan, an appraiser for the County Assessor’s Office, provided a spreadsheet using the Taxpayer’s comparable properties. This spreadsheet showed the price per square foot once all the porches, decks, garages and other components that are not living area are subtracted to more accurately calculate a price per square foot of living area. Since most of the homes in this neighborhood are custom homes, finding comparable sales is difficult. By subtracting all the custom components, one is left with a living area value which is more easily compared with other properties.

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 Taxpayer also took issue with the fact that Mr. Morgan used a “subjective opinion” by placing a Quality rating of “Good+” on the Subject Property. The Taxpayer feels that even though the Subject Property is being valued as a “Good+”, it should be rated higher since better quality materials were used on the exterior wall coverings and the roof. Mr. Morgan, being a Certified Residential Appraiser in Nebraska, has taken the required training and is qualified to offer professional opinions as to Quality and Condition of real estate. Furthermore, an increase in the Quality rating of the Subject Property would likely result in a higher assessed value, contrary to the Taxpayer’s assertion that the property is already overvalued.
19. The Taxpayer took issue with the two comparable sales provided by the County as they are smaller in square footage and would have a higher per square foot value than homes with larger square footages. Mr. Morgan agreed the two comparable sale properties were smaller to the Subject Property, however, he feels they were acceptable to use as comparables because they are inferior to the Subject Property when all assessment factors are taken into consideration. These two sales also illustrate that the assessment to sales ratio in this neighborhood is well within the acceptable range (92% to 100%), demonstrating a high degree of accuracy in the methods used to assess the neighborhood.
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:

| | |
|---------------------|------------------|
| Land | \$200,000 |
| <u>Improvements</u> | <u>\$609,910</u> |
| Total | \$809,910 |

3. This Decision and Order, if no further action is taken, shall be certified to the Saunders County Treasurer and the Saunders 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 19, 2018.

Signed and Sealed: September 19, 2018

James D. Kuhn, Commissioner