

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Michiel R. Davis,
Appellant,

v.

Saunders County Board of Equalization,
Appellee.

Case No: 17R 0143

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family home, with a legal description of: Lots 1-2 & E ½ Lot 3 Blk 13 Original Town Wahoo.
2. The Saunders County Assessor (the County Assessor) assessed the Subject Property at \$127,410 for tax year 2017.
3. Michiel R. Davis (the Taxpayer) protested this value to the Saunders County Board of Equalization (the County Board) and requested an assessed value of \$95,230 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$126,410 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. Michiel R. Davis 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 feels the increase in valuation of 33.8% to the Subject Property was an excessive increase in value from 2016.
17. The Taxpayer stated a recent sale of a property located diagonally across the street from the Subject Property was incorrectly used as a comparable property to the Subject Property. The Taxpayer stated the comparable property is being used as an apartment with three units being rented. Mr. Morgan, an Appraiser for the County Assessor’s Office, stated he has no knowledge of the comparable being used as a multi-family rental home, and it is currently being valued as a single family dwelling.
18. The Taxpayer offered a list of parcels he felt were comparable to the Subject Property; however, no property record cards were provided by the Taxpayer that would show comparability with the Subject Property.
19. The County Board provided two comparable properties showing support for the current assessment of the Subject Property.
20. The County Board lowered the value of the Subject Property due to having incorrect information regarding the HVAC. The forced air component was removed as the Subject

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.).

Property does not have air conditioning, resulting in a lower assessment than was indicated on the County Assessor's 2017 Notice of Value statement.

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	\$ 32,470
<u>Improvements</u>	<u>\$ 93,940</u>
Total	\$126,410

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