

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Keith R. Czerney,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 17R 0327

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a residential parcel improved with a single family two story home located at 6516 Rolling Hills CT, Lincoln, Nebraska, with a legal description of: Rolling Hills Ridge, Block 2 Lot 21.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$507,400 for tax year 2017.
3. Keith R. Czerney (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board) and requested an assessed value of \$454,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$507,400 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 May 31, 2018 at 9:00 am, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James Kuhn.
7. The Taxpayer was present at the hearing.
8. Brian Coulter and Tim Johns 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

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 alleges that the comparable properties used by the County are not comparable to his property.
17. At the hearing, he provided 14 property record cards of homes that sold in Precinct 09, Section 12, the same Precinct and Section where his property is located. He stated that these properties were more similar to the Subject Property than the County Assessor’s comparable properties. All of the 14 properties are single family, two story homes built between 2001 and 2011 that sold for less than \$1,000,000 between 2015 and 2016.
18. In the slideshow information used by the taxpayer, on the page with the heading of “Comp #2 and Comp #3 Assessed Values”, the Taxpayer asserts that the 2016 value of Comp #2 is \$749,900 when in actuality that value was the sale price and not the assessed value for 2017. According to the property record card provided by the taxpayer, the assessed value for 2016 was \$348,300 due to the home being newly built and only valued as partially complete. The 2017 assessed value of the property was \$680,600. Likewise on Comp #3, the taxpayer asserts that the 2016 value was \$530,000 (sale price) when the

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 record card shows the assessed value was \$446,400. The property record card shows the 2017 value of Comp #3 was \$528,800.

19. The Taxpayer provided two comparable sales of properties that he believes are more comparable to the Subject Property than the comparable properties used by the County Assessor. The first is 1800 Davenport and the second is 6724 S Ridge Drive. Both of these parcels had a reduction in assessed value from 2016 to 2017. The County Board stated that the 1800 Davenport property is not in the same market area as the subject property and had differing land values. With respect to the property at 6724 S Ridge Dr., the County Board stated that the adjusted assessed value for 2017 was based on the 2015 sales price being lower than the 2016 assessed value.
20. The 14 home sales provided by the taxpayer that sold for less than \$1,000,000 between 2015 and 2016 in Precinct 9, Section 12 showed a median sales price value of \$154.64 per square foot whereas the Taxpayer's price per square foot is \$165.01 per square foot. The Taxpayer stated that he threw out the high and low sale price which would not have affected his analysis. The issue with this analysis is that Quality, Condition, Plumbing Fixtures, Basement Finish, Neighborhood factors, Land value, Square footage, Age and other amenities are not taken into account to show that any of the 12 sales used to show a median value per square foot are actually comparable properties.
21. The County Board provided two spreadsheets as evidence. The first spreadsheet showed two sales of the same properties at different times and values to have an indicated increase in value over time, however no weight was given to this spreadsheet as it contained sales of properties after January 1, 2017. The second spreadsheet was of the assessed value per square foot of 21 properties in the 7HST342 neighborhood that the Taxpayer's property is in. Based on this spreadsheet, the Taxpayer's price per square foot was in the acceptable range of the indicated values of all the parcels.
22. 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.
23. 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	\$ 90,000
<u>Improvements</u>	<u>\$417,400</u>
Total	\$507,400

3. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster 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 June 6, 2018.

Signed and Sealed: June 6, 2018.

James D. Kuhn, Commissioner