

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Chris S. Cornell,
Appellant,

v.

Dakota County Board of Equalization,
Appellee.

Case No: 17R 0238

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

Background

1. The Subject Property is a 1,638 square foot ranch style residential property, with a legal description of: Lot 16, Block 2 Cardinal Court, South Sioux City, Dakota County, Nebraska.
2. The Dakota County Assessor (the County Assessor) assessed the Subject Property at \$203,215 for tax year 2017.
3. Chris S. Cornell, (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 \$203,215 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 August 29, 2018, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Chris S. Cornell was present at the hearing.
8. Jeff Curry, the County Assessor, and Sam Ferraro, an appraiser for the County Assessor's office, 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 2018).

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).

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 value of the Subject Property should be lower due to chemical contamination.
17. Sometime between September of 2016 and October of 2016, the Subject Property experienced an influx of gasses through its sewer system connection.
18. At the time of the hearing, there was pending litigation regarding the influx of gasses into the Subject Property and several nearby properties.
19. The Taxpayer experienced headaches and nausea when spending time in the Subject Property after the influx of gasses, and has not lived in the Subject Property since October of 2016.
20. Various tests of the conditions inside the Subject Property have been done and the Taxpayer stated that the level of Hydrogen Sulfate inside the Subject Property is high, as indicated by a meter located inside the Subject Property, but the Taxpayer did not have access to or knowledge of the results of the majority of the tests conducted.

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).

21. The Taxpayer indicated that he did not know the cost to return the Subject Property to its condition prior to the influx of gasses or otherwise make the Subject Property livable.
22. The County Assessor stated that he became aware of the influx of gasses to the Subject Property and other properties in the same area while assessing properties for the 2017 assessments and has attempted to gather as much information as possible regarding the impact of the influx of gasses and any impact they may have on the value of the Subject Property and any other properties affected.
23. The County Assessor indicted that up to the date of the hearing he has not been able to determine the impact of the influx of gasses on the value of any property in Dakota County. The County Assessor further indicated that the sales data in the area of the Subject Property, while limited, did not demonstrate any difference in sales prices for properties impacted by a potential gas influx versus non-impacted properties.
24. While the information presented to the Commission indicates that there was an event that caused an influx of gasses in the Subject Property, there is no information which would quantify its impact on the market value of the Subject Property. No information about the exact nature of the gasses present, the cost of remediation, the impact on sales, or the quantification of any similar event were presented in the hearing.
25. 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.
26. 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	\$ 22,955
<u>Improvements</u>	<u>\$180,260</u>
Total	\$203,215

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.
7. This Decision and Order is effective on April 24, 2019.

Signed and Sealed: April 24, 2019

Steven A. Keetle, Commissioner