

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Douglas J. Vitito,
Appellant,

v.

Dakota County Board of Equalization,
Appellee.

Case Nos: 18OP 0001 & 18R 0054

Decision and Order Affirming
County Board of Equalization

Case No. 19R 0148

Decision and Order Reversing
County Board of Equalization

Background

1. The Subject Property is a single family berm home, with a legal description of: Tract of land in NW1/4 SW1/4 Beg. 106.1' S of W1/4 Cor. of Sec. 20.
2. The Dakota County Assessor (the Assessor) assessed the Subject Property at \$243,530 for tax years 2017 and 2018.
3. On September 4, 2018, the Dakota County Board of Equalization (the County Board) mailed Douglas Vitito (the Taxpayer) notices that the valuation of the Subject Property had been changed to \$214,335 (2017) and \$226,220 (2018).
4. The Taxpayer protested these values to the County Board.
5. The County Board did not act on the protest related to tax year 2017.¹ For tax year 2018, the County Board determined the taxable value of the Subject Property was \$226,220.
6. The Assessor assessed the Subject Property at \$297,655 for tax year 2019.
7. The Taxpayer protested this value to the County Board.
8. The County Board determined that the taxable value of the Subject Property was \$297,655 for tax year 2019.
9. The Taxpayer appealed the actions of the County Board for tax years 2017, 2018, and 2019 to the Tax Equalization and Review Commission (Commission).
10. A Single Commissioner hearing was held on October 23, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
11. Douglas J. Vitito was present at the hearing.
12. Jeff Curry, the Assessor, was present for the County Board.

Applicable Law

13. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.²

¹ See Decision and Order Finding Jurisdiction, Case No. 18OP 0001 (February 20, 2019).

² Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

14. The Commission's review of the determination of the County Board of Equalization is de novo.³
15. 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."⁴ 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."⁵
16. 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.⁶
17. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷
18. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁸
19. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁹

Findings of Fact & Conclusions of Law

20. The Taxpayer asserted the Subject Property is overvalued due in large part to it being a berm home. The Taxpayer stated he had difficulties obtaining a loan for the Subject Property because banks did not want to loan money on a berm home. The Taxpayer stated the Subject Property was purchased in 2011 for \$175,000, and the assessed value of the Subject Property has risen \$122,655 since the purchase.
21. The Taxpayer stated that the location of Subject Property is a negative as it is on a gravel county road that has heavy traffic, causing lots of dirt, dust and mud, and it is also bordered to the north by Highway 20, which also has heavy traffic.

³ 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).

⁴ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁵ *Id.*

⁶ Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁸ 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. County Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁹ Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

22. The Assessor agreed the Subject Property is difficult to value due to a lack of sales of berm homes in the county. The Assessor found sales of homes that have similar square footages as the Subject Property (3,448 square foot), although none of the sales were of berm homes. The three sales provided had sale prices ranging from \$107.75 per square foot to \$161.29 per square foot. The Subject Property has a current assessed value of \$82.00 per square foot. The Assessor provided one sale of a berm home located near Sioux City that is 3,110 square foot and was purchased in 2018 for \$385,000. That property was 16 acres compared to the 2.41 acres of the Subject Property, but the Assessor felt this sale should be considered since it was the most comparable to the Subject Property.
23. The Assessor believed that the 2019 value should have had a 3.5% increase on the improvement value from 2018. He stated that he was valuing the functional obsolescence of the berm home by increasing the improvement value by the percentage of growth seen in the neighborhood instead of using the CAMA systems and the Marshall and Swift costing tables to determine value. This is the same method he used on the Subject Property for the past three years. The improvement value for 2019 would be \$217,340 using the Assessor's method ($\$209,990 \times 103.5\% = \$217,340$), and the land value would remain at \$16,230.
24. The Commission was not convinced by evidence from the Taxpayer that the 2017 or 2018 valuation was incorrect. No property record files of comparable properties that have sold or are being valued differently were provided to prove the County Board's determinations were unreasonable or arbitrary, and no current private appraisal was provided to show a different value. The Commission was convinced by the Assessor's testimony the 2019 valuation should be lowered.
25. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions for tax year 2019 only.
26. The Taxpayer has 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 vacated for tax year 2019 only.

ORDER

IT IS ORDERED THAT:

1. The decisions of the County Board determining the taxable value of the Subject Property for tax years 2017 and 2018, are affirmed and the decision of the County Board determining the taxable value of the Subject Property for tax year 2019 is vacated and reversed.
2. The taxable value of the Subject Property for tax years 2017, 2018 and 2019 is:

