

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Keith R. Landwehr,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 18R 0034

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Lot 59 Tiburon Ridge.
2. The Sarpy County Assessor (the Assessor) assessed the Subject Property at \$360,265 for tax year 2018.
3. Keith R. Landwehr (the Taxpayer) protested this value to the Sarpy County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$360,265 for tax year 2018.
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 22, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Keith R. Landwehr was present at the hearing.
8. Jackie Morehead, Deputy Assessor, and Larry Houlton (the Appraiser) 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
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 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).

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 stated the Subject Property was a new construction that was partially complete as of January 1, 2018. The Taxpayer provided a contract with Landmark Performance Homes that detailed the payments on the Subject Property and show the price paid for the construction as of December 26, 2017 to be \$325,823.73. The Taxpayer feels the actual value paid to the contractor should be reflected as the assessment for the 2018 tax year.
17. The Appraiser stated he visited the Subject Property on December 14, 2017 and found it to be 83% complete for the 2018 tax year. The Assessor’s office utilizes a form for partially complete properties. The form has seventeen line items listed that need to be complete for a property to be considered 100% done. According to the Appraiser, everything but the plumbing fixtures, floor coverings, built-in appliances, light fixtures, finished hardware and painting and decorating were complete. The Appraiser provided photos of the interior and exterior of the Subject Property that were taken during the review, which would show the percentage complete form to be accurate.

³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

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. County 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).

18. Value is an appraisal term, not a construction cost term. It is a basic precept of appraisal that cost does not equal value.⁹ Just because a home cost \$100,000 to build does not mean it is worth \$100,000; it may be worth more or it may be worth less than the cost to build depending on many factors. The Assessor entered the data for the Subject Property into the CAMA (computer assisted mass appraisal) system, giving them a replacement cost new of the Subject Property, and then assessed it at 83% of that value.
19. 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.
20. 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

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2018, is affirmed.
2. The taxable value of the Subject Property for tax year 2018 is:

<u>Total</u>	<u>\$360,265</u>
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3. This Decision and Order, if no further action is taken, shall be certified to the Sarpy County Treasurer and the Sarpy 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 2018.
7. This Decision and Order is effective on September 13, 2019.

Signed and Sealed: September 13, 2019

James D. Kuhn, Commissioner

⁹ The Commission may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it. Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).