

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Steven J. and Katherine L. Mercure,
Appellant,

v.

Johnson County Board of Equalization,
Appellee.

Case No: 18R 0069

Decision and Order Reversing
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Tecumseh -
- Mercure & Pohlman's Add Sec 20-5-11 TR #2 (1.24AC).
2. The Johnson County Assessor (the Assessor) assessed the Subject Property at \$362,517
for tax year 2018.
3. Steven J. Mercure and Katherine L. Mercure protested this value to the Johnson County
Board of Equalization (the County Board) and requested an assessed value of \$256,000
for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was
\$357,568 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 May 24, 2019, at the Commission Hearing
Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln,
Nebraska, before Commissioner James D. Kuhn.
7. Steven J. Mercure (the Taxpayer) was present at the hearing and was represented by
Timothy Moll.
8. Rick Smith, the County Attorney and Terry Keebler, the Assessor, 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 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 stated his assessed value is in excess of market value as proven by an independent appraisal done on the Subject Property. An appraisal done by Tammy Lempka of Professional Property Valuations LLC on January 1, 2018, and provided to the Commission, gave an opinion of value of \$315,000.
17. The assessor stated that he was uncertain of the reason for a significant increase in the assessed value of the Subject Property in a single year. He further stated that no homes have been sold in Tecumseh for more than \$300,000.
18. The Taxpayer stated there are very few comparable properties to the Subject Property with only one property that could be considered comparable in the town of Tecumseh. The comparable property, owned by Jeff and Shelly McCourtney, sold in November 2017 for \$219,000.
19. The Assessor agreed there is only one comparable home in Tecumseh and uses the cost approach method to value the Subject Property. By using the cost approach and applying depreciation, the Assessor feels the current assessment is correct. A correction to the

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).

square footage of the home was made following the Taxpayers' initial protest and resulted in the Board lowering the noticed valuation.

20. The Assessor felt the appraisal done by Ms. Lempka contained too many adjustments and did not reflect the market value of the Subject Property.
21. Although the appraisal has a number of adjustments, due to the limited number of comparable properties in Tecumseh, the appraiser needed to venture to nearby towns to find comparable properties, thus needing adjustments for location. The appraisal appears to have normal adjustments for all other positive or negative influences.⁹ The Commission is convinced the USPAP compliant appraisal is the best evidence of market value for the Subject Property.
22. 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.
23. 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.

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 2018 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2018 is:

Land	\$ 6,829
<u>Improvements</u>	<u>\$308,171</u>
Total	\$315,000

3. This Decision and Order, if no further action is taken, shall be certified to the Johnson County Treasurer and the Johnson 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 June 7, 2019.

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).

Signed and Sealed: June 7, 2019

James D. Kuhn, Commissioner