

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Dale Wimer,
Appellant,

v.

Dodge County Board of Equalization,
Appellee.

Case No: 18R 0223

Decision and Order Reversing
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Brooks Hollow Add Lot 9 Blk 4.
2. The Dodge County Assessor (the Assessor) assessed the Subject Property at \$380,040 for tax year 2018.
3. Dale Wimer (the Taxpayer) protested this value to the Dodge County Board of Equalization (the County Board) and requested an assessed value of \$275,500 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$380,040 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 March 25, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. The Taxpayer was present at the hearing.
8. Brent Quandt, Deputy Dodge County Attorney, was 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 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).

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 2018 valuation increased more than \$115,000 from 2017, yet no improvements had been done to the Subject Property. His land value increased nearly \$20,000 and his improvement value increased nearly \$100,000.
17. The Taxpayer provided a map showing all the sales of vacant lots in the subdivision in which the Subject Property is located. All the lots that have sold ranged in sales prices from \$39,900 to \$56,900. There are only three lots that have not yet sold and those range in asking price from \$49,900 to \$58,900. The Taxpayer takes issue with his current land value since there are no sales in his subdivision (Brooks Hollow ADD) to support the current assessment.
18. The Assessor stated the land values were increased because of a trending increase in sales prices in an adjoining subdivision (Brooks Hollow First ADD). The sale prices on a spreadsheet provided by the County Board show those lots range from \$61,500 to \$69,000. All of the Brooks Hollow ADD vacant lots on the County Board’s spreadsheet sold prior to 2018, but all of the Brooks Hollow First ADD lots on the spreadsheet provided by the County Board sold after September 30, 2017.

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).

19. The Taxpayer stated he provided the Assessor with the blueprints of the Subject Property and the Assessor stated one of his office staff had revisited the Subject Property to re-measure it due to a discrepancy in square footage of living area. The Assessor originally showed 2,663 square foot of living area for the Subject Property yet the blueprints showed 2,403 square foot of living area. After the County Assessor's office staff re-measured the Subject Property, the living area was reduced to 2,416 square foot. Both parties were agreeable with the 2,416 square foot of living area. The Taxpayer's concern is that the Assessor corrected the square footage of the property during the protest period and reduced the living area by 260 square foot but did not make any adjustments to the improvement value; he feels there should have been a downward adjustment to his valuation.
20. The Taxpayer provided comparable properties to show the difference in price per square foot. Simply taking the assessment and dividing it by the square footage of each property for a comparison is not an accepted method in appraisal, and little weight was given to that evidence.
21. Valuations are analyzed and set using three years of sales in each county. For the January 1, 2018 valuations, these are sales which occurred between October 1, 2015 and September 30, 2017. Sales provided to the Commission by both parties indicate the land value of the Subject Property is in excess of market value. Although the 2018 sales of vacant lots are trending higher, those sales were not part of the sales study time period for setting valuations as of January 1, 2018. The Commission is convinced the land value should be reduced to the 2017 land value of \$47,465.
22. The Commission is also convinced that there was an error in the square footage of the Subject Property by the Assessor's office. This was corrected by the Assessor; however, there was no correction in value after subtracting 260 square foot of living area from the original assessment. 260 square foot times the price per square foot of living area as shown by the Assessor's property record card for the Subject Property (\$124.05) would be a reduction of \$32,253 (rounded \$32,255).
23. 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.
24. 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	\$ 47,465
<u>Improvements</u>	<u>\$281,880</u>
Total	\$329,345

3. This Decision and Order, if no further action is taken, shall be certified to the Dodge County Treasurer and the Dodge 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 March 28, 2019.

Signed and Sealed: March 28, 2019

James D. Kuhn, Commissioner