

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

John M. Davey,
Appellant,

v.

Dakota County Board of Equalization,
Appellee.

Case No: 18R 0212

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is single family residence, with a legal description of: Part of Gov't Lot 3 Including Tract A 24-29-8 5.72 acres.
2. The Dakota County Assessor (the Assessor) assessed the Subject Property at \$347,510 for tax year 2018.
3. John M. Davey (the Taxpayer) protested this value to the Dakota County Board of Equalization (the County Board) and requested a lower value for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$142,240 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 July 10, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. John M. Davey was present at the hearing.
8. Jeff Curry, the Assessor, 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 sufficient competent evidence to justify its action."³ That presumption "remains until

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).

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

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 is uninhabitable and has been since flooding of the Missouri River in 2011. Damages to the Subject Property have not been fixed and the Assessor has valued the improvements at a near salvage price. The Taxpayer stated the improvement value is not at issue with this appeal, only the land value. The Assessor did not dispute the County Board’s determination as to the value of the improvements.
17. The Taxpayer stated there is no electricity on the property but there is water as the Subject Property is on City water supply. The Taxpayer asserted they have no ability to sell off any smaller acre parcels of the Subject Property as there is no infrastructure.
18. The Assessor has performed a land study using sales of land in the same neighborhood or market area as the Subject Property. The Assessor has corrected an issue with a neighboring property owned by Bettie Cooper which was incorrectly listed in the wrong market area or neighborhood during the 2016 appeal hearing in which relief was given to the Taxpayer.⁹ The Assessor indicated that all properties in neighborhood 29, where the Subject Property is located, are being valued equally. The Assessor provided three sales that support his current land assessment values.

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).

⁹ See Case No. 16R 0183.

19. The Taxpayer did not provide any evidence through comparable properties of land being valued differently or sales of comparable properties showing the Assessor's land value was incorrect.
20. 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.
21. 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 2018, is affirmed.
2. The taxable value of the Subject Property for tax year 2018 is:

Land	\$117,200
<u>Improvements</u>	<u>\$ 25,040</u>
Total	\$142,240

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 2018.
7. This Decision and Order is effective on August 9, 2019.

Signed and Sealed: August 9, 2019

James D. Kuhn, Commissioner