

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gabriel Rodriguez,
Appellant,

v.

Dakota County Board of Equalization,
Appellee.

Case Nos: 18R 0221

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a parcel improved with a single family home and a second smaller single family home, with a legal description of: Lots 15 & 16 Block 21 Moans Addition.
2. The Dakota County Assessor (the Assessor) assessed the Subject Property at \$159,715 for tax year 2018.
3. Gabriel Rodriguez (the Taxpayer) protested this value to the Dakota County Board of Equalization (the County Board) and requested an assessed value of \$115,000 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$159,715 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 11, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Gabriel Rodriguez 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

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 contends the Subject Property is worth no more than \$115,000 when compared to other similar properties. The Taxpayer provided six comparable properties that he contends are valued at a lower assessed price per square foot than the Subject Property. When the Commission arrayed the data provided by the Taxpayer, the Commission found the median assessed price per square foot to be \$44.59, whereas the Subject Property is valued at \$63.40 per square foot. The Commission found the median square footage of the comparable properties to be 1,374 square foot compared to the Subject Property at 2,272 square foot, almost 900 square foot smaller, which would require adjustments in value for the size difference to compare the properties for equalization purposes; no adjustments were given by the Taxpayer. The two comparable properties that are closest in square footage were twenty to twenty-five years different in age, which would require more adjustments for difference in age; no adjustments were given by the Taxpayer.

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).

17. The Taxpayer stated the smaller house on the Subject Property could not be split off the original parcel, making it more of a detriment than an asset. The smaller home is dependent on the main house for the electrical utilities and the Taxpayer thought it would be cost prohibitive to remedy even if it was possible.
18. The Assessor provided four comparable properties that were closer to size and age of the Subject Property. The Commission arrayed the data from the Assessor and found the median assessed price per square foot to be \$66.74 as compared to the Subject Property at \$63.40. The Assessor noted the comparable properties provided by the Taxpayer are mostly smaller in square footage; the Assessor does not feel as though those are truly comparable properties without numerous adjustments made for size and age variations.
19. The Assessor admitted the Subject Property is unusual for the market area as there are two homes on the same parcel. Only one sale of a residential property with two homes (one large home and one small home) has occurred recently in the market area, but the property was not similar enough to the Subject Property to be considered comparable.
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	\$ 15,680
<u>Improvements</u>	<u>\$144,035</u>
Total	\$159,715
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 19, 2019.

Signed and Sealed: August 19, 2019

James D. Kuhn, Commissioner