

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gabriel Rodriguez,
Appellant,

v.

Dakota County Board of Equalization,
Appellee.

Case No: 18R 0222

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Lot 10 Block 59 Covington Addition.
2. The Dakota County Assessor (the Assessor) assessed the Subject Property at \$55,905 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 \$45,000 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$55,905 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
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

1. The Taxpayer contends the Subject Property is worth no more than \$45,000. The Taxpayer provided six comparable properties that he feels show the Subject Property is being valued unfairly on a price per square foot basis. The Commission arrayed the data from the six comparable properties and found a median assessed price per square foot of \$38.40 compared to the Subject Property at \$57.47. The Commission found the median square footage of the comparable properties to be 1,077 compared to the Subject Property at 860 and found the median year built of the comparable properties to be 1910 compared to the actual year built of the Subject Property of 1951. The Assessor pointed out that the six comparable properties are twenty-four to sixty-one years older and mostly larger than the Subject Property; adjustments for difference in size and age would be needed to make them more equal to the Subject Property.
2. The Assessor provided six sales of different comparable properties showing a median sales price per square foot of \$72.05 and the Commission calculated a median assessed price per square foot of \$61.66; the Subject Property has a \$57.47 assessed price per square foot. All six of the Assessor’s comparable properties were similar to the Subject Property in age and size.

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).

3. The Commission was not convinced by the Taxpayer's evidence that the Subject Property is being valued unfairly. The current price per square foot is lower than the median assessed price per square foot of similar size and age homes and is much lower than the current sales price per square foot of similar size and age homes.
4. 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.
5. 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	\$ 6,480
<u>Improvements</u>	<u>\$49,425</u>
Total	\$55,905

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