

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Patrick L. Carter,
Appellant,

v.

Dakota County Board of Equalization,
Appellee.

Case Nos: 19R 0008 & 20R 0327

**DECISION AND ORDER
AFFIRMING THE DECISIONS OF THE
DAKOTA COUNTY BOARD OF
EQUALIZATION**

Background

1. The Subject Property consists of a residential parcel with a legal description of Comm at the SE COR of G.L.3 of Sec 17 TH NW 2100' to a PT O the E line of Coopers Add. TH NW 485.9' TH NE617' TH NW283.79' TH NW 740.40' TH NW 226.75' TH NW 84.62' TH NE 200' to the POB ETC 17-29-9 6.8 acres.
2. The Dakota County Assessor assessed the Subject Property at \$366,260 for tax year 2019 and \$372,200 for tax year 2020.
3. Patrick L. Carter (the Taxpayer) protested these values to the Dakota County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$366,260 for tax year 2019 and \$372,200 for tax year 2020.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on August 31, 2021, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Patrick L. Carter and Penny L. Carter was present at the hearing.
8. Christy Abts (the Assessor) and Samuel Ferraro (the Appraiser) 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 a 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 the Subject Property was flooded in March, May and September 2019 due to three flooding events on the Missouri river. The Taxpayer stated they were dealing with flood water issues for 228 days during 2019. A boat was used for parts of the year to access the home due to flood waters. The Taxpayer provided photos showing water intruding in and surrounding the Subject Property. The Taxpayer was finally able to get back into the Subject Property in November 2019.
17. The Taxpayer stated the assessment should be lowered until there are at least 3 to 5 years without flooding before raising the value to the 2019 or 2020 assessment. The Taxpayer is required to have flood insurance and feels the possible re-sale value of the Subject Property is hurt because of the past flooding and their flooded home being repeatedly shown on local media outlets.
18. The Taxpayer stated a previous owner had flooding issues in 2011 and the County Board lowered the assessment \$53,000 for 2011 and another \$174,000 for 2012.

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 Assessor stated she is required to value homes as of January 1 of each tax year and the flooding issue was not present on January 1, 2019 or January 1, 2020. The Assessor does not dispute that major flooding did occur with the Subject Property but was not able to recommend lowering the value as there was no flooding issue on January 1 of either tax year at issue.
20. The Assessor stated she recommended the Taxpayer file a form 425 (Report of Destroyed Real Property) with the county clerk or county assessor as this would be the Taxpayer's only option for a possible reduction in assessed value for damage that occurred after the January 1 assessment date required by law. The Taxpayer stated the form 425 required damage to an improvement exceeding 20% of the improvements assessed value in the current tax year. The Taxpayer stated they were unsure if they would meet the 20% damage threshold required by the form 425 because they didn't have all the estimates for repairs by the July 15 deadline to file.
21. The Subject Property had damage from the flood as evidenced by photos provided. Cracks and gaps in the driveway and a crack presumably in the foundation were photographed. No evidence was provided to quantify the effect of this damage on the value of the home.
22. The Commission is convinced the Subject Property was majorly flooded by three different flooding events of the Missouri river; however, the Taxpayer had the responsibility to file a form 425 as a possible remedy in seeking a reduction in value. The County Board's actions in 2011 and 2012 are not relevant as there was no form 425 available at that time and each tax year stands on its own.
23. 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.
24. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2019 and 2020 are affirmed.
2. The taxable value of the Subject Property for tax year 2019 is: **\$366,260**
3. The taxable value of the Subject Property for tax year 2020 is: **\$372,200**

4. 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).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2019 and 2020.
8. This Decision and Order is effective on December 6, 2021.

Signed and Sealed: December 6, 2021

James D. Kuhn, Commissioner