

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Steven L. and Katherine L. Mercure,
Appellant,

v.

Johnson County Board of Equalization,
Appellee.

Case Nos: 19R 0158 & 20R 0148

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Tecumseh – Mercure & Pohlman’s Add SEC 20-5-11 TR #2 (1.24 A).
2. The Johnson County Assessor (the County Assessor) assessed the Subject Property at \$354,445 for tax years 2019 and 2020.
3. Steven L. Mercure (the Taxpayer) protested these values to the Johnson County Board of Equalization (the County Board) and requested assessed values of \$315,000 for tax years 2019 and 2020.
4. The County Board determined that the taxable value of the Subject Property was \$354,445 for tax years 2019 and 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 March 22, 2021, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Timothy Moll (Attorney) and Steven J. Mercure were present at the hearing.
8. Benjamin Beethe (Deputy County Attorney) and Terry Keebler (the Assessor) 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 Subject Property had an independent appraisal done with an effective date of January 1, 2018, showing a value of \$315,000. This appraisal was used as evidence in a 2018 appeal to the Commission as evidence of value; the Taxpayer won that appeal.
17. A decree fixing the value of property under a prior assessment is not admissible to prove value under a subsequent assessment, and a prior year’s assessment is not relevant to a subsequent year’s valuation.⁹
18. There have been no changes to the Subject Property since the 2018 appeal. The Taxpayer asserted that there has been no change in the Tecumseh housing market and there have been no sales over \$200,000 in Tecumseh. The Taxpayer provided no evidence to substantiate these claims.
19. The Taxpayer asserted that the Assessor is using the cost approach when valuing the Subject Property whereas the 2018 appraisal used the sales comparison approach, which is a better method for valuing older homes like the Subject Property. 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).

⁹ *DeVore v. Bd. of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988), *Kohl’s Department Stores v. Douglas County Board of Equalization*, 10 Neb.App. 809, 814, 638 N.W.2d 877, 881-882 (2002).

further asserted that there are problems when valuing older homes by the cost approach such as realizing the proper depreciation to apply to the replacement cost new.

20. The Assessor agreed that no homes similar to the Subject Property have sold in the Tecumseh market; however, similar homes elsewhere in Johnson County have sold and are showing an increase in sales prices. The Assessor provided five sales of homes in Johnson County that have sold for \$294,000 to \$500,000; all sold for more than their assessed values.
21. The Assessor felt the 2018 appraisal would have a higher value if done for 2019 and 2020 due to the availability of newer sales in Johnson County to use as comparables.
22. The assessed value for real property may be different from year to year, dependent upon the circumstances.¹⁰ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹¹
23. The Commissioner was not convinced the 2018 independent appraisal reflects the actual value of the Subject Property for any year other than 2018.
24. 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.
25. 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 years 2019 and 2020 is: **\$354,445**.
3. This Decision and Order, if no further action is taken, shall be certified to the Johnson County Treasurer and the Johnson 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 years 2019 and 2020.

¹⁰ See *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹¹ See *DeVore v. Bd. of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

7. This Decision and Order is effective on April 9, 2021.

Signed and Sealed: April 9, 2021

James D. Kuhn, Commissioner