

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Nathan J. McHargue,
Appellant,

v.

Merrick County Board of Equalization,
Appellee.

Case No: 19R 0239

**DECISION AND ORDER
AFFIRMING THE DECISION OF THE
MERRICK COUNTY BOARD OF
EQUALIZATION**

Background

1. The Subject Property is a single family dwelling, with a legal description of: IOLL on 1960.00 (South Side) S-T-R 06-13-06.
2. The Merrick County Assessor (the Assessor) assessed the Subject Property at \$222,430 for tax year 2019.
3. Nathan J. McHargue (the Taxpayer) protested this value to the Merrick County Board of Equalization (the County Board) and requested an assessed value of \$167,462 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$222,430 for tax year 2019.
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 September 24, 2020, at 3:00 p.m. at the Law Enforcement Center, 111 Public Safety Drive, Grand Island, Nebraska before Commissioner James D. Kuhn.
7. Nathan J. McHargue was present at the hearing.
8. Lynelle Homolka, Merrick County Attorney, and Jen Meyers, Merrick County Assessor (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 Taxpayer asserted the Assessor’s method of valuing the Subject Property is inconsistent with valuations of other homes in the same neighborhood.
17. The Assessor explained that homes in the neighborhood of the Subject Property, known as the CC Lakes neighborhood, were valued on a per square foot basis with the per square foot value being determined by the age of the home. Homes constructed before 1940 are valued at \$55 per square foot, 1940 to 1960 at \$62 per square foot, 1961 to 1980 at \$100 per square foot, 1981 to 2002 at \$104 per square foot, and 2003 to present at \$106 per square foot. This system was developed by the Assessor based on a single sale at \$104 per square foot. The system does not account for the construction quality or condition of the home being assessed. The Assessor acknowledged that this system of assessment is “unorthodox.”
18. The Taxpayer provided property record files (PRF) of eight other properties in Merrick County. Seven of these properties are from the CC Lakes neighborhood. The

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).

Commission finds that these seven properties are comparable to the Subject Property and the remaining property is not comparable because it is from a different neighborhood.

19. The seven comparable properties show an assessed value per square foot ranging from \$88.95 to \$608.41.
20. One of the seven comparable properties, the Senkbile property, is assessed at \$88.95 per square foot, when according to the Assessor's age-based system, it should be valued at \$106 per square foot. Another of the comparable properties is a 400 square foot cottage assessed at \$608.41 per square foot when it should be valued at \$104 under the Assessor's system. Due to differences in size, style, and year built, these properties are not highly comparable to the Subject Property for equalization purposes.⁹
21. When these highest and lowest values are removed, the remaining five comparable properties, plus the Subject Property, range in assessed value per square foot from \$103.93 to 106.06, with a median value of \$105.29. The Subject Property has an assessed value per square foot of \$105.36.
22. The Taxpayer performed a cost approach analysis of the Subject Property which indicated a value of \$167,462. The Taxpayer's cost approach information was not given to the Commission and the Taxpayer did not claim that he was a licensed appraiser in the State of Nebraska. No USPAP compliant appraisal was given as evidence to the Commission.
23. The PRF of the Subject Property provided by the County Board includes a cost approach analysis indicating a value of \$159,385. The Assessor did not use the value indicated by the cost approach because, in her opinion, it does not reflect the market value of the Subject Property.
24. The PRFs of the Taxpayer's seven comparables also include cost approach analyses for the comparable properties. The results of these cost approaches are the same as the assessed values of the respective properties for five of the seven comparables, but not for the other two. The assessor applied negative economic depreciation to three of the seven comparables to obtain a higher indicated value from the cost approach, but she did not apply negative economic depreciation to the other four comparables or the Subject Property.
25. The Assessor was valuing some of the garages and other components of the comparable properties as living area. The Assessor explained that whether the garage square footage or component counted towards the total square footage depended on when the garage or structure was built. Newly built structures would be valued separately but original structures would count towards the total square footage.
26. It appears that the Assessor's methodology for determining the value of the Subject Property was not consistent with commonly accepted mass appraisal practices and is not supported by Nebraska law.¹⁰ However, the information presented at the hearing is not

⁹ See *Zabawa v. Douglas County Bd. of Equal.*, 17 Neb.App. 221, 757 N.W.2d 522 (2008).

sufficient for the Commission to determine the actual value of the Subject Property. Without clear and convincing evidence of the actual value of the Subject Property, the Commission is unable to conclude that the value set by the County Board is arbitrary or unreasonable.

27. 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.
28. 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 must 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 2019 is affirmed.
2. The taxable value of the Subject Property for tax year 2019 is \$222,430.
3. This Decision and Order, if no further action is taken, shall be certified to the Merrick County Treasurer and the Merrick 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 2019.
7. This Decision and Order is effective on February 24, 2021.

Signed and Sealed: February 24, 2021

James D. Kuhn, Commissioner