

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Rodney Pollard,
Appellant,

v.

Merrick County Board of Equalization,
Appellee.

Case No: 19R 0004

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family residence, with a legal description of: Bucktail Lake Lot 18 8-75 CLX CXFD (IRR LT 25,154 Sq Ft).
2. The Merrick County Assessor (the County Assessor) assessed the Subject Property at \$515,705 for tax year 2019.
3. Rodney W. Pollard (the Taxpayer) protested this value to the Merrick County Board of Equalization (the County Board) and requested an assessed value of \$344,000 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$491,165 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 July 7, 2020, at 1:00 p.m. at the Law Enforcement Center, 111 Public Safety Drive, Community Building 2nd Floor, Grand Island, Nebraska, before Commissioner James D. Kuhn.
7. Rodney Pollard was present at the hearing.
8. Lynelle Homolka (Merrick County Attorney) and Jen Myers (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 stated there are similar homes on Bucktail Lake that have “cheaper taxes” than the Subject Property. The Taxpayer was told by his insurance agent the value of the Subject Property would be \$300,000 to \$350,000. The Commission did not receive any evidence the Taxpayers insurance agent was a licensed appraiser or that any USPAP compliant appraisal was done on the Subject Property.
17. The Subject Property is located on a series of lakes that are part of both Polk County and Merrick County. The Taxpayer asserted Polk County is assessing land and homes on their lakes differently than Merrick County, causing concerns of valuation since they are all in the same general vicinity. The Merrick County Board of Equalization directed the Assessor to adjust all land values on lake properties to \$3.00 per square foot for 2019 in an effort to equalize the land values with Polk County properties.
18. The Assessor stated there are very few improved sales on this lake because properties tend to be generational, handed down in the family, and not offered for sale. 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).

Assessor testified there are starting to be more improved sales which will help aid her in valuing the neighborhood for 2020 and beyond.

19. The Assessor stated her current method of valuing the improvements is unorthodox because of the lack of improved sales. The Assessor testified she values homes built before 1940 at \$55 per square foot, homes built between 1940 and 1960 at \$62 per square foot, homes built between 1961 and 1980 at \$100 per square foot, homes built between 1981 and 2002 at \$104 per square foot and homes built in 2003 and newer are valued at \$106 per square foot. The depreciation and valuation model used to derive these values was not given as evidence.
20. The Taxpayer did not provide Property Record Files (PRF) of similar homes being valued differently or showing the Subject Property is being treated unfairly as compared to similar comparable properties. The Assessor has provided the methodology for valuing properties in the Bucktail Lake area and has shown that all land and improvements are being valued equally.
21. 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.
22. 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 2019 is affirmed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$ 75,460
<u>Improvements</u>	<u>\$415,705</u>
Total	\$491,165

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 November 6, 2020.

Signed and Sealed: November 6, 2020

James D. Kuhn, Commissioner