

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Kurt & Sharon K. Blankemeyer,  
Appellant,

v.

Dakota County Board of Equalization,  
Appellee.

Case No: 17R 0047

Decision and Order Affirming the  
Determination of the Dakota  
County Board of Equalization

Background

1. The Subject Property is one story residential parcel, with a legal description of: Lots 7 8 9 10 11 12 Block 170, Dakota City, Dakota County, Nebraska.
2. The Dakota County Assessor (the County Assessor) assessed the Subject Property at \$219,640 for tax year 2017.
3. Kurt & Sharon K. Blankemeyer, (the Taxpayer) protested this value to the Dakota County Board of Equalization (the County Board) and requested an assessed value of \$170,085 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$219,640 for tax year 2017.
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 August 28, 2018, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Kurt Blankemeyer was present at the hearing.
8. Jeff Curry, the Dakota County 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.<sup>1</sup>
10. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
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

<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

<sup>2</sup> 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.”<sup>3</sup> 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.”<sup>4</sup>

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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Subject Property is a factory built modular home located in Dakota City, Nebraska.
17. The Taxpayer alleged that the value of a modular home is less than that of a stick built home and that therefore the Subject Property should be assessed at a lower rate. The Taxpayer further alleged that state guidelines or policy required that manufactured and modular homes be valued at a lower per square foot amount than stick built homes.
18. The Assessor stated that a modular home was constructed using the same materials and designs as a stick built home but that pieces were constructed in a factory and then assembled on site for a finished product that was substantially similar to a stick built home. In contrast, a manufactured home was completely built in a factory and moved onto the site fully assembled or in halves that were joined together on site. A manufactured home used different materials and assembly methods than stick built or modular homes.
19. There is not a state law, regulation, or other guideline that requires a modular home to be valued at a lesser per square foot amount due to the method of assembly.
20. The Taxpayer presented information regarding the sale of a modular home that occurred in 2017 for a much lower per square foot value than the Subject Property. However, the

---

<sup>3</sup> *Brenner* at 283, 811.

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> 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. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

Assessor stated that that sale was not a qualified sale due to interior damage to that sold property, and that it would not therefore be a comparable property to the Subject Property due to its poorer condition.

21. There is no other information regarding sales of homes in Dakota County which suggests that the value of a modular home would be lower than that of an otherwise comparable stick built home.
22. The Taxpayer alleged that the assessed value of the Subject Property increased at a greater rate than the assessed value of nearby properties based on their values in 2013 compared to their values in 2017.
23. The Nebraska Supreme Court has held that the assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>9</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>10</sup>
24. Even assuming the prior years' valuations were relevant, information presented at the hearing indicates that the assessed value of the Subject Property was reduced in the prior tax year by the referee for the County Board due to it being a modular home, while the other properties presented by the Taxpayer did not have their values lowered.
25. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>11</sup>
26. The properties presented by the Taxpayer are located adjacent to the Subject Property; however, their age and style (i.e. ranch, split level, multi-level) are different from the Subject Property.
27. The Properties presented by the Taxpayer are not comparable to the Subject Property without adjustments for these differences and there is not information before the Commission to allow it make these adjustments.
28. 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.
29. 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 2017, is affirmed.

---

<sup>9</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>10</sup> 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).

<sup>11</sup> See generally, *International Association of Assessing Officers, Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 20,000
<u>Improvements</u>	<u>\$199,040</u>
Total	\$219,640

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 2017.
7. This Decision and Order is effective on March 29, 2019.

Signed and Sealed: March 29, 2019

---

Steven A. Keetle, Commissioner