

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Cory G. Kilpatrick,
Appellant,

v.

Scotts Bluff County Board of Equalization,
Appellee.

Case No: 16R 0186

Decision and Order Affirming Scotts Bluff
County Board of Equalization

Background

1. The Subject Property is rural residential parcel improved with a 2,045 square foot single family dwelling, with a legal description of: Lt 18, Bale Heights Add Rlt (.48) 18-22-54, Scotts Bluff County, Nebraska.
2. The Scotts Bluff County Assessor (the County Assessor) assessed the Subject Property at \$337,775 for tax year 2016.
3. The Taxpayer protested this value to the Scotts Bluff County Board of Equalization (the County Board) and requested an assessed value of \$134,849 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$300,000 for tax year 2016.
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 May 23, 2017, at the Hampton Inn, Scottsbluff, Nebraska, before Commissioner Nancy J. Salmon.
7. Taxpayer Cory G. Kilpatrick was present at the hearing on his own behalf.
8. Amy Ramos, Scotts Bluff 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 1.¹
10. The Commission’s review of the determination of the County Board of Equalization is de novo.²
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

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *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.”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 alleged that the Subject Property’s assessment was not uniform and proportionate with other comparable properties in Scotts Bluff County.
17. The Taxpayer provided the Commission with copies of tax statements for three properties which he believed were comparable to the Subject Property. He did not provide the Commission with Property Record Cards for the three alleged comparable properties containing the characteristics of the comparable properties with which the Commission could determine the comparability of these other properties with the Subject Property. The Taxpayer also indicated that he had a financing appraisal performed in 2014. However, he did not provide a copy of the appraisal.
18. The County Assessor provided the Commission with the Property Record Card for the Subject Property. After explaining the process which she utilized to value the Subject Property, she provided a spreadsheet showing the differences between the Subject Properties and the alleged comparable properties provided by the Taxpayer. However, the Commission notes that such properties were sales listings, and no Property Record Cards were provided. The Commission notes that the Taxpayer’s comparable properties had differences in age, location, quality, and condition from the Subject Property.

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

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. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965)

(determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

⁸ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

19. The Taxpayer did not provide sufficient information for the Commission to grant relief based upon his claim.
20. 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.
21. 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 2016, is Affirmed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$ 13,500
<u>Improvements</u>	<u>\$286,500</u>
Total	\$300,000

3. This Decision and Order, if no further action is taken, shall be certified to the Scotts Bluff County Treasurer and the Scotts Bluff County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
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 2016.
7. This Decision and Order is effective on May 26, 2017.

Signed and Sealed: May 26, 2017

Nancy J. Salmon, Commissioner