

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jennifer M. Simpson,
Appellant,

v.

Saunders County Board of Equalization,
Appellee.

Case No: 18R 0206

Decision and Order Affirming the Decision
of the Saunders County Board of
Equalization

Background

1. The Subject Property is an unimproved residential lot located at Lot 138, Lake Allure, Ashland, Saunders County, Nebraska. The property record card for the parcel is in the Case File. The parcel identification number is 3374119.
2. The Saunders County Assessor (the County Assessor) assessed the Subject Property at \$140,000 for tax year 2018.
3. Jennifer M. Simpson (the Taxpayer) protested this value to the Saunders County Board of Equalization (the County Board) and requested an assessed value of \$5,210 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$140,000 for tax year 2018.
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 11, 2019, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Jennifer M. Simpson and Jon Springer were present at the hearing for the Taxpayer.
8. Joe Dobesh, Saunders County Attorney, was present for the County Board. Kyle Morgan, an appraiser for the Saunders County Assessor, was also present.

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 purchased the Subject Property on February 17, 2017 for \$175,000.
17. The Subject Property is a lake front lot.
18. The Taxpayer asserts that the lot was not buildable as of the effective date of January 1, 2018 and as of the date of the hearing because the developer had not yet installed appropriate roads and utilities, and the lake had not been dredged.
19. During the protest proceeding, on July 15, 2018, a referee hired by the County Board⁹ recommended a taxable value of \$5,210.¹⁰
20. All lots at Lake Allure were assessed at \$140,000 for tax year 2018.
21. Prior the effective date of January 1, 2018, seven lots at Lake Allure were purchased. The sale prices ranged from \$165,000 to \$220,000. During calendar years 2017 and 2018, 18 lots at Lake Allure were purchased. The sale prices ranged from \$160,000 to \$220,000. The median sale price for these sales was \$175,000.

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 Pursuant to Neb. Rev. Stat. §77-1502.01, the County Board may appoint a Referee to hear protest and make a recommendation to the County Board.

¹⁰ Without explanation, this is the same amount that was requested by the Taxpayer on the Protest form signed on June 1, 2018.

22. 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.
23. 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 2018 is affirmed.
2. The taxable value of the Subject Property for tax year 2018 is \$140,000.
3. This Decision and Order, if no further action is taken, shall be certified to the Saunders County Treasurer and the Saunders 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 2018.
7. This Decision and Order is effective on October 30, 2020.

Signed and Sealed: October 30, 2020

Robert W. Hotz, Commissioner