

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Larry W. Armbright,
Appellant,

v.

Dakota County Board of Equalization,
Appellee.

Case No: 18R 0202

Decision and Order Reversing
County Board of Equalization

Background

1. The Subject Property is a single family residence, with a legal description of: Tract of land 500’x500’ in parts of 2 & 11-28-8 5.74 acres.
2. The Dakota County Assessor (the Assessor) assessed the Subject Property at \$244,935 for tax year 2018.
3. Larry W. Armbright (the Taxpayer) protested this value to the Dakota County Board of Equalization (the County Board) and requested a lower value for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$244,935 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 10, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Larry W. Armbright was present at the hearing.
8. Jeff Curry, the 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 sufficient competent evidence to justify its action.”³ That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears

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).

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

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 he is being assessed for outbuildings that are no longer on the property and were removed many years ago. The Taxpayer cited to the Assessor’s property record file for the Subject Property, which shows a site plan sketch with eight outbuildings and two corn cribs. He stated there are currently only three outbuildings on the Subject Property. The Assessor acknowledged that the site plan sketch showed the outbuildings and corn cribs; however, he stated the site plan sketch was just a historical site plan showing where outbuildings were located over the past several years and not current drawings of the outbuildings. The Assessor showed on the property record file that only three outbuildings are being valued.
17. The Taxpayer asserted the age of his home on the property record file may be incorrectly listed as 1890; however, no evidence of any other age was given. The Taxpayer believes the value of his home is in excess of market value; however, no comparable properties were offered as evidence.
18. The Assessor provided property record files for comparable properties and feels the current valuation of the home to be correct. The Assessor thought the outbuilding values were higher than they should be and made adjustments to them once he reviewed the Taxpayer’s photos and description of the current condition of the outbuildings. The Assessor suggested a value of \$5,650 for a combined value of the outbuildings, previously valued at \$13,765.

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).

19. The Commission was convinced by the Assessor that the incorrect value was place on the outbuildings and should be lowered to \$5,650 for the 2018 tax year.
20. The Taxpayer has 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 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 vacated.

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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2018 is:

Land	\$ 33,220
<u>Improvements</u>	<u>\$203,600</u>
Total	\$236,820

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 2018.
7. This Decision and Order is effective on August 8, 2019.

Signed and Sealed: August 8, 2019

James D. Kuhn, Commissioner