

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Timberline LLC,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 19R 0266

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is single family dwelling, with a legal description of: East Lawn Addition to University Place, Lot 51 – 52.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$179,100 for tax year 2019.
3. Timberline LLC (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board) and requested a lower assessment for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$179,100 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 March 29, 2021, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Steven M. Champoux (LLC Member) was present at the hearing.
8. Bret Smith (the Appraiser) 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 a 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 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).

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 the Subject Property is being valued higher than other similar homes on the same street or very nearby. The Taxpayer provided six comparable properties with similar square footages and amenities as the Subject Property. The Taxpayer stated the assessed value of the Subject Property has risen more and faster than the comparable properties.
17. The Appraiser stated the Subject Property is valued higher than the six comparable properties provided by the Taxpayer because the Subject Property is considered a “Fill in” home and assessed using a different valuation model with other “Fill in” homes. The Appraiser explained that a “Fill in” home is a newer home built on an older lot in an older neighborhood.
18. The Appraiser agreed that the Taxpayer’s comparable properties are on the same street or nearby the Subject Property but noted that the Taxpayer’s comparables were all built in the late 1950s or 1960s whereas the Subject Property was built in 2003. The Appraiser provided a spreadsheet with “Fill in” homes valued using the same valuation model. The Appraiser stated he felt the current assessment was correct.

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).

19. “Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that no one part is compelled to pay a disproportionate share of the tax. Where it is impossible to secure both the standards of the true value of a property for taxation and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. However, the burden is on the taxpayer to show by clear and convincing evidence that the valuation placed upon the taxpayer's property when compared with valuation placed on other similar property is grossly excessive.”⁹
20. The Commission did not consider the six comparable properties provided by the Taxpayer as “similar property” since the difference in age was so great.
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: **\$179,100**.
3. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster 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.

⁹ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999) (emphasis added, internal citations omitted).

7. This Decision and Order is effective on April 9, 2021.

Signed and Sealed: April 9, 2021

James D. Kuhn, Commissioner